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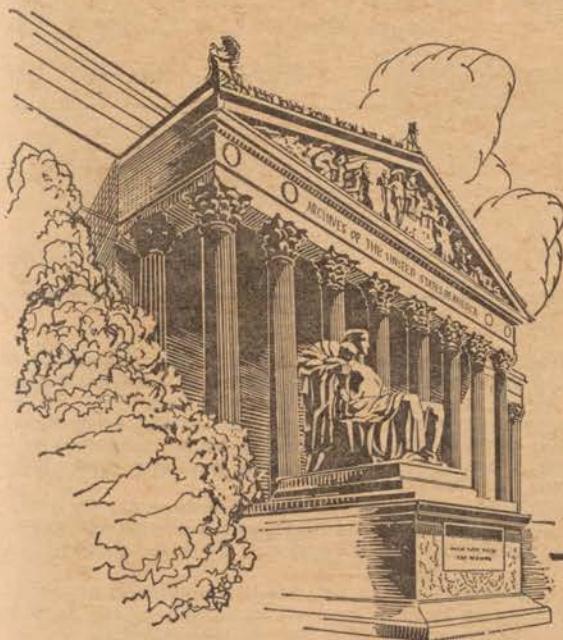
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Agricultural Stabilization and
Conservation Service
Agriculture Department
Atomic Energy Commission
Civil Aeronautics Board
Commodity Credit Corporation
Consumer and Marketing Service
Defense Department
Delaware River Basin Commission
Federal Communications Commission
Federal Power Commission
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General Services Administration
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Title 26—Internal Revenue Part 1 (§ 1.1201-End) (Revised) -----	\$2. 00
Title 32—National Defense (Parts 1000-1199) (Revised) -----	1. 00
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Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202.

PART 1—GENERAL PROVISIONS

1. New paragraph (h) is added to § 1.109-1; §§ 1.302-1 and 1.304 are revised; new §§ 1.304-1 and 1.304-2 are added; paragraphs (b) and (c) of § 1.313 are revised; and paragraph (e) of § 1.322-1 is revised, as follows:

§ 1.109-1 Applicability.

(h) Issuance of any instructions described in § 1.108(a) (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method or practice, not covered in ASPR or in Department of Defense Directives) constitutes a deviation unless permitted under § 1.108(a) (1) through (7).

§ 1.302-1 Existing Government assets.

To the extent possible, supplies shall be obtained from releasable assets of the Department of Defense or from surplus or excess stocks in the hands of any other Government agency. This shall specifically include purchase of excess strategic and critical materials available for transfer from the General Services Administration as listed in periodic GSA Bulletins which are distributed in accordance with Departmental procedures (see § 5.705 of this chapter). Personnel responsible for issuing purchase requests shall insure compliance with policies pertaining to the utilization of existing Department of Defense material assets, as set forth in the Defense Utilization Manual (DSAM 4140.1) (AFM 67-11) (AR 1-38) (MCO P7020.5A). All purchase requests involving estimated expenditures of \$50 or more for items centrally managed at inventory control points will be appropriately annotated with a statement to the effect that Department of Defense-wide review of assets has been initiated or completed, as appropriate, in compliance with the Defense Utilization Manual. This procedure is not applicable to automated procurements where procedures have been established under the automated system for a review of assets in accordance with

DSAM 4140.1. In addition, this procedure is not applicable to subsistence, bulk petroleum, and medical drugs, as presently provided or later modified in that manual, or to such other items as may be added thereto. Interdepartmental purchases shall be accomplished in accordance with the provisions of Part 5 of this chapter.

§ 1.304 Procurement of privately developed items.

§ 1.304-1 General.

It is Department of Defense policy:

(a) To make all procurements on a competitive basis to the maximum practicable extent, and

(b) To provide an incentive to industry creativity by honoring the rights in data resulting from private development and by limiting the demands for such data to that which is essential for Government purposes.

It is important that the efforts directed toward increasing competition do not demand or use privately developed data in a manner which is contrary to the policies and procedures established in Subpart B, Part 9 of this chapter. Accordingly, when the two policies stated above produce situations which require the contracting officer to decide whether to procure data for future competitive procurement, the provisions of Subpart B, of Part 9 of this chapter, as supplemented by §§ 1.304-1.304-2, shall govern.

§ 1.304-2 Specific procurement methods.

(a) Where Defense requirements are for items which are available from more than one source as a result of either licensing, competitive copying, or independent development, the contracting officer shall seek full and free competition for such items.

(b) Where the Government desires to purchase privately developed items but does not have necessary data with unlimited rights for use in a specification for competitive procurement, the contracting officer shall use one of the following alternative procedures with preference in the order of this listing (see also § 1.313).

(1) Where practical, procurement shall be competitive using performance or other specifications, including purchase descriptions, which do not contain data developed at private expense to which the Government does not have unlimited rights. Procurement on this basis will normally not provide items of identical design. However, it frequently is not necessary that items of identical design be purchased. There are two methods of competitive procurement which may provide items of the same or of similar design and suitable performance. One of these is purchase by two-step formal advertising. The other is by the use of "brand name or equal" purchase descrip-

tions. To encourage participation by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, procuring activities should consider incorporating a requirement in the IFB or RFP for a bid sample to be used for evaluation purposes only (see §§ 1.1206 through 1.1206-4 and 2.202-4 of this chapter).

(2) Where items of design or composition similar or identical to a privately developed item are required and it is determined that competitive procurement is not practicable, procurement should be on a non-competitive basis from the firm which developed or designed the item or process or its licensees, provided productive capacity and quality are adequate and price is fair and reasonable.

(3) Where additional sources are required for items of design or composition similar or identical to a privately developed item in order to meet total current or mobilization requirements, and the procedures in subparagraph (1) of this paragraph cannot practicably be used to create additional sources, the developer should be encouraged to license others to manufacture such items. Procuring activities should also consider the specific acquisition by the Government of the necessary rights in data. Where complex technical equipment is involved and the establishment of satisfactory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company procurement technique (see Subpart G, Part 4 of this chapter).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (i.e., reverse engineering) and used for competitive procurement. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Procuring Activity. In the case of the Air Force this authority may be delegated to the Commanders of the Air Force Systems Command Divisions and Centers and the Air Force Logistics Command Air Materiel Areas.

§ 1.313 Procurement of parts.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for procurement purposes (or can be made so available in keeping with the policies in Subpart B, Part 9 of this chapter) are to be procured on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark

plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of paragraph (b) of this section generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in Subpart B, Part 9 of this chapter) to assure the requisite reliability and interchangeability of the parts, and procurement on a competitive basis would be consistent with the assurance described in paragraph (a) of this section. In assessing this assurance, the nature and function of the equipment for which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive procurement of the former but not of the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

§ 1.322-1 General.

(e) *Set-asides.* Total small business set-asides are compatible with the multiyear method of procurement and may be used when both procedures are appropriate. Partial set-aside procedures (both small business and labor surplus area) are generally not compatible with the multiyear procedure when high startup costs are involved because of the potential duplication of such costs by the set-aside contractor and the non-set-aside contractor. Nevertheless, when the multiyear procedure is based not on high startup costs but on the opportunity for cost savings through assurance of continuity of production over longer periods of time, partial set-aside procedures are compatible with the multiyear procedure. Furthermore, even where high startup costs are involved, use of partial set-aside procedures together with the multiyear procedure may be appropriate in exceptional circumstances, such as where the criteria for partial set-asides are met under Subparts G or H of this part and it is likely that broader or more realistic competition will result from a combination of both procedures, and this broader competition is likely to more than offset any duplication of startup

costs. When reviewing a proposed procurement involving possible use of this procedure, in addition to consideration of the criteria established in paragraphs (b) and (c) of this section, the contracting officer shall invite the advice and counsel of the activity's small business specialist and the SBA representative, if one is assigned to that activity, permitting either or both to review all pertinent facts and make recommendations thereon.

2. Paragraph (b)(2) of § 1.326-4 is revised; new §§ 1.330, 1.330-1, 1.330-2, 1.330-3, 1.330-4, 1.330-5, and 1.330-6 are added; and § 1.608-1(d) is revised, as follows:

§ 1.326-4 Breakout guidelines.

(b) * * *

(2) Is a suitable data package available with rights to use it for Government procurement? (Note that breakout may be warranted even though competitive procurement is not possible.) (See Subpart B, Part 9 of this chapter.)

§ 1.330 Total Package Procurement.

Total Package Procurement (TPP) involves combining as a single package the procurement of related requirements such as the design, development, production, and support. The purpose of this section is to introduce the TPP concept, outline its potential application, and set forth some general guidance. Each Department has an Office of Primary Responsibility (OPR) as set forth under § 1.330-6(c) that is to follow the evolution of TPP and furnish appropriate guidance within its Department. Suggestions and innovations pertaining to the TPP concept, its application, and the method of implementation should be brought to the attention of the appropriate OPR.

§ 1.330-1 General.

(a) *Purpose.* The purpose of Total Package Procurement (TPP) is to procure under the influence of competition as much of the total design, development, production, and support requirements for a system or component as may be practicable, thereby:

(1) Providing firmer 5-year force structure program package planning information concerning performance cost and schedules;

(2) Discouraging contractors from "buying in" on the design and development effort with the intention of recouping on the subsequent production program;

(3) Permitting program decision and source selection based on binding performance, price and schedule commitments by contractors for the total program or major part of it;

(4) Providing a firmer basis for projecting total acquisition and operational costs for use in source selection, and in the determination of appropriate contractual incentives;

(5) Motivating contractors to design initially for economical production and support of operational hardware which may not receive sufficient emphasis in

the absence of productions commitments;

(6) Requiring contractors to assume more responsibility for program success, thereby permitting the Government to monitor programs more in terms of surveillance and less in terms of detailed management.

(b) *Definition.* TPP is a method of procuring at the outset of the acquisition phase under a single contract containing price, performance and schedule commitments, the maximum practical amount of design, development, production and support needed to introduce and sustain a system or component in the inventory.

§ 1.330-2 Application.

The application of TPP must be determined on a case by case basis, but TPP shall not be applied to Advanced or Exploratory Development. For Engineering Development or Operational Systems Development Programs, all prerequisites of DoD Directive 3200.9 shall be met and the force structure sufficiently defined to reflect the probable production and/or support requirements. TPP should not be applied to those programs subject to rapidly changing operational requirements or technology.

§ 1.330-3 Policy.

Where the criteria set forth in § 1.330-2 have been met, TPP will be given consideration as the method for acquiring Operational Systems Development and the associated production and support effort for service use. TPP will be considered for application in those procurement situations where subsequent production and/or support requirements are anticipated and it would be impractical to compete such requirements other than as part of the initial procurement.

§ 1.330-4 Implementation.

(a) TPP procurement plans involving Engineering Development or Operational Systems Development Programs will be submitted to the Department's OPR for approval (see § 1.330-6(c)). Other TPP procurement plans may be subject to such reviews and approvals as deemed appropriate by the individual Departments.

(b) Contract Definition Requests for Proposals for Engineering Development or Operational Systems Development Programs will specify if TPP is contemplated.

(c) Request for Proposals/Request for Quotations (RFP/RFQ) should fully define the scope of the procurement (what the total package consists of) and include (1) specific guidelines for the composition of proposals and (2) the criteria which will be considered in source selection. Use of a model definitive contract as an attachment to the RFP/RFQ is encouraged.

(d) Consideration must be given to maintenance and supply concepts. The key factors influencing logistics (such as deployment, utilization rates and maintenance demands) should be established if these items are to be included as a part of the total package. In most cases,

it will be appropriate to postpone specific identification of spares and support items. In such instances, consideration should be given to requiring the competing contractors to submit a pricing formula, to be used for competitive evaluation of the proposals and for incorporation into the contract for future pricing of these requirements. Alternatively, the Government may specify the method to be used in pricing spares and support items which may be identified and ordered from time to time during the life of the contract.

(e) Specifications stressing, as far as possible, performance rather than design should be used on TPP Engineering Development or Operational Systems Development contracts since detailed design specifications tend to stifle technical innovation, to require excessive administration, and to engender contract changes.

(f) Firm fixed price or fixed price incentive contracts will be used for TPP. Normally, prior to source selection, definitive contracts will be signed by all responsive responsible offerors who submit proposals within a competitive range (see § 3.805-1 of this chapter). This will allow the Government to sign the definitive contract of the successful offeror at completion of source selection and minimize the need for post source selection negotiations.

§ 1.330-5 Special provisions.

A TPP contract must be tailored to the specific program and structured so that the contractor's responsibilities are clearly delineated. The contractor should be vested with maximum authority to manage TPP programs with a minimum of Government direction consistent with the type of contract selected, since subsequent direction and changes by the Government will tend not only to constrict the contractor's ability to fulfill his commitments but to dilute the contractor's responsibilities, thus negating many of the benefits of TPP. The use of performance specifications should reduce the number of changes and their impact and will eliminate changes which do not result in performance improvements. While the Government should strive to avoid involvement in the detailed management of TPP, it must nevertheless maintain sufficient visibility as to the progress of the program and retain the right to intervene if the success of the program is in jeopardy. Other contractual provisions which should be considered in TPP include:

(a) Obligations for total system responsibility, specifying that such responsibility is not reduced even though Government-furnished property (GFP) may be integrated into the end item (provided such property is suitable under the Government Property clause) and extending the contractor's responsibility to the performance of the system in an operational environment;

(b) Obligations for correction of defects at no change in contract price (e.g., firm fixed price or target cost, target profit, ceiling price and incentive provisions), or if less than full correction

is directed by the Government, agreement to reduce the contract price accordingly;

(c) Pricing arrangements for alternate schedules and quantities;

(d) Pricing arrangements for items for which there is a contingent requirement (i.e., production, spares, etc.); and

(e) Appropriate protection for the contractor and the Government against major inflationary or deflationary fluctuations in the national economy when the TPP covers an extended period of time (normally more than 3 years).

§ 1.330-6 Other guidance.

(a) The funding method to be employed must be determined in advance and set forth in the RFP/RFQ for the TPP. The design and development portion TPPs normally will be funded incrementally from Research and Development appropriations. Unless approval is obtained to fund incrementally the production and other supplies and services included in the TPP, this portion of the TPP must be either fully funded or funded in fiscal year segments.

(b) TPP may involve associate contractors or Government-furnished property crucial to total systems performance. Nevertheless, the Government should strive to hold one contractor solely responsible for the satisfactory performance of the system in its operational environment. This may require advance agreements between associate contractors and reconsideration of those items to be Government-furnished, and will require special systems responsibility provisions in the prime contract.

(c) Offices of Primary Responsibility for TPP are:

(1) Army—Office of the Assistant Secretary of the Army (Installation and Logistics);

(2) Navy—Chief of Naval Material (Attn: MAT 02);

(3) Air Force—Headquarters USAF (AFSPP); and

(4) DSA—Headquarters DSA (DSA-PP).

Each OPR will keep the other OPRs apprised of its experience and refinements in application and management of total package procurements.

(d) Those activities requiring guidance in determining the applicability or application of TPP to a specific program should consult their appropriate Command headquarters.

§ 1.608-1 Situations where reports are required.

(d) A report is required by § 8.207 of this chapter (termination settlements);

3. Sections 1.704-3(b)(3), 1.705-2, 1.705-4, 1.706-1, 1.706-2, and 1.706-3 are revised; in § 1.706-5(c), the clause heading and clause paragraph (a) are revised; and §§ 1.706-6, 1.800, 1.801-1 and 1.801-2 are revised, as follows:

§ 1.704-3 Small business specialists.

(b) * * *

(3) Prior to issuance of solicitations or contract modifications for additional

supplies or services in excess of \$2,500, he shall determine that small business concerns will receive adequate consideration including initiation of set-asides (§ 1.706). This determination may be made jointly with the contracting officer or may be in the form of a recommendation to him. Disagreements between the small business specialist and the contracting officer on proposed set aside action shall be resolved by the appointing authority or his designee, whose decision shall be final except in those cases where an SBA representative intervenes as an interested party. (See § 1.706-3 as to resolution of disagreements with SBA recommendation on set-asides.) (See § 1.308 as to the required record of contract actions.)

§ 1.705-2 SBA representatives.

(a) SBA may assign representatives to any purchasing or contract administration activity on a full or part time basis to carry out SBA policies and programs. The SBA representative shall be informed of the mission of the activity. In accordance with the procedures of the Department concerned, SBA shall obtain security clearances for each of its representatives. SBA representatives and employees shall comply with Departmental directives concerning the conduct of Military Department procurement personnel. The duties of the assigned SBA representatives include review of proposed procurements to recommend to the purchasing activity (1) set-asides on selected procurements not unilaterally set aside by the small business specialist and the contracting officer, (2) new qualified potential small business sources, and (3) breakout of components for competitive procurement. SBA representatives may also conduct periodic reviews of purchasing activities to ascertain whether there is compliance with the small business policies prescribed by this subchapter.

(b) The purchasing activities shall include in the appropriate bidders list or in any group of firms to be solicited in specific procurements, the names of firms submitted by SBA, unless there is a valid reason for not so doing.

§ 1.705-4 Certificates of competency.

(a) SBA has statutory authority to certify the competency of any small business concern as to capacity and credit. "Capacity" means the overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills "know-how," technical equipment, and facilities or the ability to obtain them. Contracting officers shall accept SBA certificates of competency as conclusive of a prospective contractor's capacity (see §§ 1.903-1(b) and 1.903-2) and credit (see § 1.903-1(a)), unless the contracting officer has substantial doubt as to the concern's ability to perform, in which case the procedures in paragraphs (f) and (g) of this section apply.

(b) In procurement where the highest competence obtainable or the best scien-

tific approach is needed, as in certain negotiated procurement of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure is applicable.

(c) If a bid or proposal of a small business concern is to be rejected solely because the contracting officer has determined the concern to be nonresponsible as to capacity or credit, the matter shall be referred to the appropriate SBA field office having the authority to process the referral in the geographical area involved. If required, guidance as to the location of the appropriate SBA field office may be obtained from an SBA representative assigned to the purchasing activity or the nearest SBA field office. This procedure applies only to proposed awards exceeding \$2,500. For proposed awards exceeding \$2,500, but not exceeding \$10,000, its use is within the discretion of the contracting officer. A pre-award survey (see § 1.905) shall be made prior to a determination by a contracting officer that a small business concern is not responsible because of a lack of capacity or credit on a proposed award of more than \$10,000. Concurrent referrals of two or more bids or proposals, rejected because of lack of capacity or credit for a proposed award, shall not be made to SBA by the contracting officer. Final processing of a case, including possible issuance of certificate of competency, must be completed by SBA on each referral before the contracting officer may proceed with an additional referral on the proposed award to SBA. If a partial set-aside is involved and the bid of a small business concern on the unreserved portion is to be rejected for lack of capacity or credit and the same small business concern is entitled to consideration on the reserved portion of the set-aside if a certificate of competency is issued by the SBA, the entire quantity of the procurement (reserved and unreserved) for which that small business concern may be entitled, if competent, shall be referred to SBA and the referral papers so noted. The SBA may then certify the small business concern for the maximum quantity of the procurement for which it is eligible. The award shall be withheld until SBA action concerning issuance of a certificate of competency, or until 15 working days after the SBA is so notified, whichever is earlier, subject to the following:

(1) Under no circumstances will a referral be made to the SBA prior to a determination by the contracting officer that the bid or proposal of the small business concern is responsive.

(2) The activity performing the pre-award survey shall furnish such survey to the procuring contracting officer. If the procuring contracting officer deter-

mines, in accordance with § 1.904, that the small business concern is not responsible solely by reason of a lack of capacity or credit, he will refer the matter direct to the SBA, or he may notify the pre-award survey activity to refer the matter to the SBA, whichever is the more expeditious (e.g., where the surveying activity is substantially closer to the cognizant SBA office than the procuring office, it may be more expeditious to have the surveying activity refer the matter to the Small Business Administration). A copy of the communication referring the matter to SBA shall be forwarded to higher authority (Office of Assistant Secretary (Installations and Logistics) in the appropriate Military Department or the Office of the Director of the Defense Supply Agency).

(3) Upon making a determination to refer the matter to the SBA, the procuring contracting officer shall furnish to the SBA, or to the surveying activity, whichever is consistent with the action taken under subparagraph (2) of this paragraph, the data prescribed in paragraph (d) of this section. The activity that refers the matter to the SBA shall maintain close liaison with the SBA to assure compliance with paragraph (e) of this section. If such activity does not hear from the cognizant SBA Regional Office within 5 working days after the matter has been referred, the activity will contact the SBA Office to which the matter was referred to determine whether a certificate of competency is being processed. When, in accordance with subparagraph (2) of this paragraph, the procuring contracting officer has requested the pre-award survey activity to refer the matter to SBA, that activity shall keep the procuring contracting officer advised of significant developments, including the results of any inquiry to the SBA at the end of the five working day period, and any new or additional facts, learned from the SBA, that warrant reversal of the pre-award survey activity's negative finding. Higher authority specified in subparagraph (2) of this paragraph shall be promptly informed in writing of all cases where (i) the small business concern elects not to file an application for a certificate of competency, or (ii) SBA declines to issue a certificate of competency, or (iii) the purchasing activity reverses the pre-award survey activity's negative finding concerning capacity or credit.

(4) A referral need not be made to the SBA if the contracting officer certifies in writing that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to the SBA.

(5) A referral need not be made to the SBA if a contracting officer determines a small business concern nonresponsible for a reason other than lack of capacity or credit, i.e., if a concern does not satisfy the criteria of § 1.903-1 (d) or (e). If a contracting officer determines that a concern does not meet the requirements of § 1.903-1(c) as to a satisfactory record of performance, the matter must be referred to the SBA only

if the unsatisfactory record of performance was due solely to inadequate capacity or credit. If a contracting officer has any doubts as to whether the unsatisfactory record of performance can reasonably be attributed to lack of capacity or credit, he shall forward the matter to the higher authority of his department identified in subparagraph (2) of this paragraph, or his designee. The decision of such higher authority shall be final.

(6) A determination by a contracting officer that a small business concern is not responsible for reasons other than deficiencies in capacity or credit (e.g., lack of integrity, business ethics, or persistent failure to apply necessary tenacity or perseverance to do an acceptable job—not whether the bidder can perform but whether he will perform) must be supported by substantial evidence documented in the contract files. These factors of responsibility are not covered by the certificate of competency procedure, but are for determination by the contracting officer alone.

(d) It is the policy of the Department of Defense to endeavor to reach agreement with the SBA regarding the lack of capacity or credit of a small business concern. To assist the SBA and to assure that it has the benefit of the view of the Military Department or DSA, the SBA shall be furnished three copies of the solicitation, one copy of the pertinent drawings and specifications, the pre-award survey findings, pertinent technical and financial information, and, if available, the abstract of bids.

(e) SBA field offices will notify the procuring contracting officer of each case where they (1) plan to issue a certificate of competency, or (2) are submitting a case to SBA, Washington, D.C., for approval prior to issuance of a certificate of competency, and to provide the contracting officer or his designated representative with a brief written statement citing the reasons for SBA's proposed affirmative action. Prior to final SBA action, the procuring contracting officer (or the pre-award survey activity when authorized to act as his representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be made available, upon request, to the procuring contracting officer, or his representative, at such meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a purchasing office or surveying activity, who participated in a pre-award survey of the prospective contractor or other personnel having cognizance of such survey, shall be prepared to discuss with the SBA the basis for the pre-award findings. Every effort should be made to resolve any differences between the SBA and the Military Departments or DSA through a complete exchange of pre-award information developed by each agency.

(f) One of the following courses of action shall be taken subsequent to discussions or a meeting between representatives of the contracting officer and SBA field offices:

(1) If the new and additional facts presented by the SBA field office representatives so warrant, the negative determination as to capacity and credit of the apparent low bidder or offeror shall be reversed, the referral to SBA shall be withdrawn, and the contract award shall be made without the necessity for issuance of a certificate of competency by SBA. The procuring contracting officer shall promptly inform higher authority in his agency (see paragraph (c) (2) of this section) and the SBA field office of his intention to take such action and the anticipated date of contract award.

(2) If agreement cannot be reached between the SBA field office and the procuring contracting officer and substantial doubt still exists as to the ability of the contractor to perform, the contracting officer shall request the SBA field office to suspend action to permit referral of the case to higher authority in the Military Department or DSA for review and possible appeal to SBA, Washington, D.C. The contracting officer shall forward through channels on an expedited basis a complete case file to the appropriate higher Military Department or DSA authority specified in paragraph (c) (2) of this section with a request that the case be considered for appeal to SBA, Washington, D.C. This file will include the data specified in paragraph (d) of this section, SBA's rationale for proposing affirmative certificate of competency action, and the contracting officer's comments thereon. Procurement action shall be suspended until the contracting officer is informed by higher authority of the final decision in the case. If any organizational review level above the contracting officer in the Military Department or DSA concludes that the request for certificate of competency action should be withdrawn and a contract awarded without benefit of a certificate of competency, the contracting officer should be so informed and provided written instructions on how to proceed with the procurement. A copy of such instructions will be furnished to higher authority specified in paragraph (c) (2) of this section. If all organizational review levels including higher authority, as specified in paragraph (c) (2) of this section in the Military Department or DSA, agree with the recommended appeal action of the contracting officer, higher authority will request in writing the SBA Associate Administrator for Procurement and Management Assistance, Washington, D.C., to review the proposed affirmative certificate of competency action of the SBA field office. If SBA, Washington, D.C., does not concur with the proposed affirmative certificate of competency action of its field office, it shall so inform the Office of the Assistant Secretary of Defense (Installations and Logistics) which will promptly make this information available to the appropriate higher Military Department or DSA authority. If SBA, Washington, D.C., concurs with the affirmative certificate of competency

action proposed by the SBA field office, it shall so inform the Office of Small Business and Economic Utilization Policy, Office of the Assistant Secretary of Defense (Installations and Logistics), giving reasons for its position orally. This information will be made promptly available by OASD (I&L) to higher authority in the Military Department or DSA which may then request OASD (I&L) to establish a meeting with SBA, Washington, D.C., to present an appeal on the proposed certificate of competency action. A representative of OASD (I&L) will join with a Military Department or DSA team on each formal appeal made to SBA, Washington, D.C. Following an appeal, the determination made by the SBA Associate Administrator relative to certificate of competency action shall be considered final and not subject to further appeal by the Military Department or DSA.

(3) If agreement cannot be reached between the contracting officer and the SBA field office, the contracting officer may conclude it would not be practicable to appeal the case to the Washington SBA level nor would it be appropriate to withdraw his request for certificate of competency action. In that case, the contracting officer shall inform the SBA field office that it must issue a certificate of competency as a prerequisite to contract award. However, such action shall not be taken by the contracting officer without prior approval from the designated higher authority (see paragraph (c) (2) of this section) within his Department. This higher authority will inform OASD (I&L) in writing of each procurement coming under this category indicating the basis for the determination not to appeal the case to SBA, Washington, D.C.

(g) If an SBA field office fails to give a contracting officer the opportunity to refer a proposed affirmative certificate of competency action to higher authority in his Military Department or DSA for review and possible appeal, appeal action described in paragraph (f) of this section may be taken by the contracting officer subsequent to the issuance of a certificate of competency if he has substantial doubt as to the ability of the contractor to perform.

§ 1.706-1 General.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 1.803(a) (2) and the following criteria, any individual procurement or class of procurements or an appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is determined to be in the interest of (1) maintaining or mobilizing the Nation's full productive capacity, (2) war or national defense programs, or (3) assuring that a fair proportion of Government procurement is placed with small business concerns. The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer normally upon initiation by the small business specialist. If a small business specialist is not assigned or is otherwise

not available, the set-aside may be initiated by the contracting officer. A joint determination is one which is made jointly by an SBA representative and the contracting officer. Insofar as practicable, unilateral determinations rather than joint determinations shall be used as the basis for set-asides. SBA recommendations for set-asides will be limited to those proposed procurements over \$2,500 which, after review by the small business specialist or the contracting officer, have been determined by either party not to meet the criteria for total or partial restriction to small business concerns.

(b) To provide for SBA consideration of individual set-asides, at the request of its representative, the purchasing activity shall make available to him for review at the activity (to the extent that he has been granted security clearance) all proposed classified and unclassified procurements expected to exceed \$2,500 on which unilateral set-asides have not been made by the contracting officer.

(c) In addition to individual procurement set-asides, classes of current and future procurements, or portions thereof, of selected items or services, or groups of like items or services may be set aside for exclusive small business participation. The determination to make a class set-aside may be either unilateral or joint. Unilateral set-asides will normally be initiated by recommendation of the small business specialist, but may also be initiated by the contracting officer. Joint class set-asides may be recommended by SBA representative for only those items or services on which unilateral class set-asides have not previously been made by the contracting officer. The determination to make a class set-aside shall not depend on the existence of a current procurement if future procurements can be clearly foreseen. Class set-asides shall apply only to the purchasing activity making or participating in the agreement, and shall not apply to an individual procurement for which small purchase procedures are to be used. A class set-aside agreement should specifically identify the items or services subject thereto, and provide for annual joint review by the small business specialist (if unilateral) or the SBA representative (if joint), and the contracting officer, to determine whether it should be withdrawn (see § 1.706-3). Any class of procurements proposed to be totally set aside shall satisfy the requirements of § 1.706-5. The set-aside determination for any class of procurements proposed to be partially set aside shall specify that it does not apply to any individual procurement not severable into two or more economic production runs or reasonable lots. Records of individual procurements under each class set-aside shall be maintained by individual purchasing activities and shall include the solicitation number and date, item or service, unilateral or joint class set-aside, estimated dollar amount of the procurement, and estimated dollar amount of the set-aside. A copy of each such record shall be made available by each purchasing activity to the small

business specialist or to SBA upon request.

(d) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item has been placed with small business concerns;

(2) The item is on an established planning list under the Industrial Readiness Planning Program, except that a total set-aside shall not be authorized when one or more large business Planned Emergency Producers of the item desire to participate in the procurement (but see § 1.706-6 as to partial set-asides);

(3) The item is on a Qualified Products List, except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List unless it has been confirmed that none of such large businesses desires to participate in the procurement (but see § 1.706-6 as to partial set-asides);

(4) A period of less than 30 days from date of issuance of solicitations is prescribed for the submission of the bids or proposals;

(5) The procurement is classified;

(6) Small business concerns are considered to be receiving a fair proportion of total contracts for supplies or services;

(7) A class set-aside of the item or service concerned has been made at some other purchasing activity; or

(8) The item will be described by "brand name or equal."

(e) Procurement of supplies which were developed and financed in whole or in part by Canadian sources under the United States-Canadian Defense Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Military Department.

§ 1.706-2 Contract authority.

Contracts for total or partial set-asides entered into by conventional negotiation (see §§ 1.706-5(b) and 1.706-6(d)) or by "Small Business Restricted Advertising" (see § 1.706-5(b)) are negotiated procurements and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see § 3.201-2(b)(2) of this chapter) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

§ 1.706-3 Review, withdrawal, or modification of set-asides or set-aside proposals.

(a) Prior to issuing solicitations each individual procurement governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting

officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist or the SBA representative, as appropriate, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual procurements.

(b) Upon a recommendation of the small business specialist that an individual procurement or class of procurements, or portion thereof, be set aside the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the small business specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case to the Head of the Purchasing Activity or to higher authority in accordance with the provisions of paragraph (d) of this section. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of paragraph (f) of this section.

(d) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual procurement or class of procurements or a portion thereof and so notifies the SBA representative in writing, or if the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint set-aside determination, the SBA representative shall be allowed 2 working days to appeal in writing to the Head of the Purchasing Activity or his designee for decision. Within 1 working day after receipt of a decision from the Head of the Purchasing Activity or his designee approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend procurement action pending a further appeal by the Administrator of the SBA to the Secretary of the Military Department concerned. The SBA shall be allowed 7 working days after making such written request within which (1) the Administrator of SBA may appeal to the Secretary of the Military Department concerned, and (2) notify the contracting officer whether the further appeal has in fact been taken. If notification is not received by the contracting officer within the 7-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that an appeal to the

Secretary was not taken. Where an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 7-day period, the Head of the Purchasing Activity through his normal channels shall forward the matter to the Secretary of the Military Department concerned through the appropriate Departmental Small Business Advisor as identified in § 1.704-2 with full justification of his decision.

(e) Any procurement action which has been appealed by the SBA representative shall be suspended pending the decision of the Head of the Purchasing Activity or his designee. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with paragraph (d) of this section, the suspension shall continue until (1) the SBA appeal is deemed to have been withdrawn (as provided in paragraph (d) of this section), or (2) the matter is determined by the Secretary of the Military Department concerned. However, this procedure shall not apply to any particular procurement action which the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement of justification. The contracting officer shall promptly give written notice to the SBA representative of any such procurement action initiated.

(f) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual procurement or class of procurements or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see § 1.704-3(a)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Small Business Advisor as identified in § 1.704-2.

(g) A signed memorandum of non-concurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

§ 1.706-5 Total set-asides.

(c) * * *

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE
(OCTOBER 1967)

(a) *Restriction.* Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small

business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

§ 1.706-6 Partial set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 1.803(a)(2), a portion of a procurement, not including construction, shall be set aside for exclusive small business participation (see § 1.706-1) where:

(1) The procurement is not appropriate for total set-aside pursuant to § 1.706-5;

(2) The procurement is severable into two or more economic production runs or reasonable lots (see § 1.804-1(a)(2)(i)-(vii)); and

(3) One or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with technical competency and productive capacity will respond with bids or proposals. Before reaching this conclusion the contracting officer shall consult with the small business specialist and may make advanced inquiries to determine the number of interested concerns. Any deviation from this partial set-aside procedure must be approved by the Head of the Procuring Activity on a case-by-case basis.

Similarly, a class of procurements, not including construction, may be partially set aside in accordance with § 1.706-1(b). Under certain specified conditions, partial set-asides may be used in conjunction with multi-year procurement procedures (see § 1.322-1(e)).

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c) (1) In advertised procurements involving partial set-asides for small business, each invitation for bids shall contain substantially the following notice. The applicable size standards shall be set forth in the Schedule. In negotiated procurements, the notice shall be appropriately modified for use with requests for proposals.

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (DECEMBER 1967)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest unit price at which an award is made on the non-set-aside portion; *Provided, however,* That where the highest award price on the non-set-aside portion is established by a foreign bidder, the 120 percent rule shall be applied to the evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) on the non-set-aside portion established under applicable Buy American-Balance of Payments procedures. Negotiations shall be conducted with such small business concerns in the following order of priority:

Group 1. Small business concerns which are also certified-eligible concerns.

Group 2. Small business concerns which are also persistent labor surplus area concerns.

Group 3. Small business concerns which are also substantial labor surplus area concerns.

Group 4. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which are considered in evaluating bids on the non-set-aside portion; *Provided, however,* That where the highest award price on the non-set-aside portion is established by a foreign bidder, the award price for the set-aside portion shall be the high evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) established under applicable Buy American-Balance of Payments procedures, except where a responsive bid has been submitted on the non-set-aside portion at a unit price which when so adjusted is lower than the adjusted highest unit price awarded on the non-set-aside portion but could not be accepted because of quantity limitations or other consideration (such as the bidder's responsibility). In the latter case if the quantity limitation or other considerations do not preclude consideration of the unit price of such unaccepted bid at the time of negotiation for the set-aside portion, a quantity of the set-aside portion equal to the quantity of such unaccepted bid shall be offered to eligible concerns in their order of priority at the adjusted unit price of such unaccepted bid. If no eligible bidder will take the entire quantity so offered at the adjusted unit price of the unaccepted bid, then all eligible concerns in their order of priority shall be offered any lesser portion at the same price. (In the event more than one such unaccepted bid is involved, the same procedure shall be applied successively to each such bid on negotiation for the set-aside portion.) Subject to the conditions set forth below any remaining quantity of the set-aside portion shall be offered to eligible concerns in their order of priority at the adjusted highest unit price awarded on the non-set-aside portion. If such an unaccepted bid is submitted by a concern eligible to participate in the set-aside, such concern must accept a quantity of the set-aside portion equal to the quantity of the unaccepted bid at the adjusted unit price of the unaccepted bid before any portion of the set-

aside may be awarded to that concern at a higher price. If such an unaccepted bid is submitted by a concern not eligible to participate in the set-aside, a quantity of the set-aside portion equal to the unaccepted bid must be awarded at the adjusted unit price of such unaccepted bid before any portion of the set-aside is awarded to any eligible concern at a higher price. The Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

(b) *Definitions.* (1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, § 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(2) A "labor surplus area" is a geographical area which is:

(i) An appropriate section of a State or "labor area" classified by the Secretary of Labor as a "section of concentrated unemployment or underemployment"; or

(ii) Classified by the Department of Labor as an "Area of Substantial Unemployment" (herein referred to as an area of substantial labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(iii) Classified by the Department of Labor as "Area of Persistent Unemployment" (herein referred to as an area of persistent labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(iv) Not classified as in (ii) or (iii) above, but which is individually certified as an area of persistent or substantial unemployment by the Department of Labor at the request of a prospective contractor.

(3) Labor surplus area concern includes certified-eligible concerns, persistent labor surplus area concerns, and substantial labor surplus area concerns, as defined below:

(i) "Certified-eligible concern" means a concern (A) located in or near a section of concentrated unemployment or underemployment which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections, and (B) which will agree to perform, or cause to be performed by a certified concern, a substantial proportion of a contract in or near such sections; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns in or near such sections. A concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment

If the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 30 percent of the contract price.

(ii) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(iii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(4) "Unit price" shall include evaluation factors added for the rent-free use of Government property.

(c) *Identification of areas of performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided*, That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that: (i) if awarded a contract as a certified-eligible small business concern under the set-aside portion of this procurement he will perform, or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment and, in the performance of such contract or subcontracts, will employ a proportionate number of disadvantaged persons residing within sections of concentrated unemployment or underemployment in accordance with plans approved by the Secretary of Labor; (ii) if awarded a contract as a small business persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time performance of the contract, as persistent labor surplus areas; and (iii) if awarded a contract as a small business substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time performance of the contract, as substantial or persistent labor surplus areas.

(e) *Eligibility based on certification.* Where eligibility for preference is based upon the status of the bidder or bidder's subcontractors as a "certified-eligible concern," the bidder shall furnish with his bid evidence of certification by the Secretary of Labor.

(2) In requirements contracts involving a partial small business set-aside add the following to the above clause.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Partial Small Business Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(d) (1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the non-set-aside portion, taking into account the evaluation factors for rent-free use of Government property pursuant to Subpart E, Part 13 of this chapter (provided, however, where the successful bidder which establishes the highest award price on the non-set-aside portion is a foreign bidder, the 120 percent rule shall be applied to the evaluated price on the non-set-aside portion (see § 6.104-4 of this chapter)), and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing notices: *Provided*, That, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of § 2.407-6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion except that where the successful bidder which establishes the highest award price on the non-set-aside portion is a foreign bidder, the award price for the set-aside portion shall be the highest evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) on the non-set-aside portion (see § 6.104-4 of this chapter). A bidder or offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, accept-

ance of voluntary refunds (see § 1.312), or the change of prices after award by negotiation of a contract modification.

(2) When the award price for the non-set-aside portion has been determined and where an award will be made to a small business concern and the same small business concern is entitled to receive the set-aside portion of a solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

§ 1.800 Scope of subpart.

This subpart sets forth Department of Defense policy and procedures with respect to aiding areas of persistent or substantial labor surplus and sections of concentrated unemployment or underemployment, hereinafter referred to as "labor surplus areas," in the United States, its possessions, and Puerto Rico. This part implements Defense Manpower Policy No. 4 (Revised), October 16, 1967 (32A CFR Chapter 1), and U.S. Department of Labor Regulations, 29 CFR Part 8, as amended, October 16, 1967. Defense Manpower Policy No. 4 states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

§ 1.801 Definitions.

§ 1.801-1 Labor surplus area concern.

(a) Concerns (1) located in or near sections of concentrated unemployment or underemployment which have been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections and (2) which will agree to perform or cause to be performed by certified concerns, a substantial proportion of a contract in or near such sections; also concerns which, though not so certified, agree to have a substantial proportion of a contract performed by certified concerns in or near such sections. Such concerns, herein referred to as "certified-eligible concerns," shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 30 percent of the contract price.

(b) Persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Persistent Labor Surplus." A concern shall be deemed to perform a contract substantially in "Areas of Persistent Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas amount to more than 50 percent of the contract price.

(c) Substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus." A concern shall be deemed to perform a contract substantially in "Areas of Substantial Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas or in "Areas of Persistent Labor Surplus" amount to more than 50 percent of the contract price.

Example A. ABC Company, manufacturing in a full employment area, bids on a contract at \$1,000. ABC Company will incur the following costs:

Direct labor.....	\$200
Overhead.....	200
Purchase of materials from XYZ, which manufactures the materials in a labor surplus area.....	510

ABC Company qualifies as a labor surplus area concern.

Example B. DEF Company, manufacturing in a labor surplus area, bids on a contract at \$1,000. DEF Company will incur the following costs:

Direct labor.....	200
Overhead.....	200
Purchase of materials from UVW, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier).....	550

DEF Company does not qualify as a labor surplus area concern regardless of whether UVW's supplier manufactures in a labor surplus area.

Example C. GHI Company, manufacturing in a labor surplus area, bids on a contract at \$1,000. GHI Company will incur the following costs:

Direct labor.....	230
Overhead.....	275
Purchase of materials from RST, which manufactures the materials in a full employment area.....	425

GHI Company qualifies as a labor surplus area concern.

§ 1.801-2 Labor surplus area.

Labor surplus area means a geographic area which at the time of award is:

(a) An appropriate section of a State or "labor area" classified by the Secretary of Labor as a "section of concentrated unemployment or underemployment", or

(b) Classified by the Department of Labor as an "Area of Substantial Unemployment" (herein referred to as an area of substantial labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment", or

(c) Classified by the Department of Labor as an "Area of Persistent Unemployment" (herein referred to as an area of persistent labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment", or

(d) Not classified as in paragraphs (b) or (c) of this section, but which is

individually certified as an area of persistent or substantial unemployment by the Department of Labor at the request of a prospective contractor.

4. Sections 1.802, 1.803(a) (4), 1.804-2, 1.805-1, 1.805-2, and 1.805-3 are revised; in § 1.1202(b), subparagraph (7) is revised and new subparagraph (8) is added; and §§ 1.1204 and 1.1206-1(a) are revised, as follows:

§ 1.802 General policy.

Except as provided in § 1.806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with concerns which will perform substantially in labor surplus areas. In carrying out this policy, to accommodate the small business policies of Subpart G of this part, preference shall be given in the following order of priority to (a) certified-eligible concerns which are also small business concerns; (b) other certified-eligible concerns; (c) persistent labor surplus area concerns which are also small business concerns, (d) other persistent labor surplus area concerns, (e) substantial labor surplus area concerns which are also small business concerns, (f) other substantial labor surplus area concerns and (g) small business concerns which are not labor surplus area concerns. But in no case will price differentials be paid for the purpose of carrying out this policy. Heads of Procuring Activities and Heads of Field Purchasing and Contract Administration Activities are responsible for the effective implementation of the Labor Surplus Area Program within their respective activities. Responsibility for administration of the program may be assigned to small business specialists appointed pursuant to § 1.704-3.

§ 1.803 Application of policy.

(a) * * *

(4) Department of Labor certification (see § 1.801-2(d)) shall be considered conclusive with respect to the particular procurement concerned;

§ 1.804-2 Set-aside procedures.

(a) Where a portion of a procurement is to be set aside pursuant to § 1.804-1, the procurement shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(b) (1) In advertised procurements involving set-asides pursuant to this subpart, each invitation for bids shall contain substantially the following notice. In negotiated procurements, the notice

shall be appropriately modified for use with requests for proposals. The notice shall be made a part of each contract under the set-aside portion of the procurement.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (DECEMBER 1967)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest unit price at which an award is made on the non-set-aside portion: *Provided, however,* That where the highest award price on the non-set-aside portion is established by a foreign bidder, the 120 percent rule shall be applied to the evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) on the non-set-aside portion, established under applicable Buy American-Balance of Payments procedures. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

- Group 1. Certified-eligible concerns which are also small business concerns.
- Group 2. Other certified-eligible concerns.
- Group 3. Persistent labor surplus area concerns which are also small business concerns.
- Group 4. Other persistent labor surplus area concerns.
- Group 5. Substantial labor surplus area concerns which are also small business concerns.
- Group 6. Other substantial labor surplus area concerns.
- Group 7. Small business concerns which are not surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which are considered in evaluating bids on the non-set-aside portion: *Provided, however,* That where the highest award price on the non-set-aside portion is established by a foreign bidder, the award price for the set-aside portion shall be the high evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) established after evaluation under applicable Buy American-Balance of Payments procedures, except where a responsive bid has been submitted on the non-set-aside portion at a unit price which when so adjusted is lower than the adjusted highest unit price awarded on the non-set-aside portion but could not be accepted because of quantity limitations or other consideration (such as the bidder's responsibility). In the latter case if the quantity limitation or other considerations do not preclude consideration of the unit price of such unaccepted bid at the time of negotiation for the set-aside portion, a quantity of the set-aside portion equal to the quantity of such unaccepted bid shall be offered to eligible concerns in their order of priority at the adjusted unit price of such unaccepted bid. If no eligible bidder will take the entire quantity so offered at the adjusted unit price of the unaccepted bid, then all eligible concerns in their order of priority shall be offered any lesser portion at the same

price. (In the event more than one such unaccepted bid is involved, the same procedure shall be applied successively to each bid on negotiation for the set-aside portion.) Subject to the conditions set forth below any remaining quantity of the set-aside portion shall be offered to eligible concerns in their order of priority at the adjusted highest unit price awarded on the non-set-aside portion. If such an unaccepted bid is submitted by a concern eligible to participate in the set-aside, such concern must accept a quantity of the set-aside portion equal to the quantity of the unaccepted bid at the adjusted unit price of the unaccepted bid before any portion of the set-aside may be awarded to that concern at a higher price. If such an unaccepted bid is submitted by a concern not eligible to participate in the set-aside, a quantity of the set-aside portion equal to the quantity of the unaccepted bid must be awarded at the adjusted unit price of such unaccepted bid before any portion of the set-aside is awarded to any eligible concern at a higher price. The Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over bidders eligible for the set-aside portion.

(b) *Definitions.* (1) The term "labor surplus area" means a geographical area which is a section of concentrated unemployment or underemployment, a persistent labor surplus area, or a substantial labor surplus area, as defined below:

(i) "Section of concentrated unemployment or underemployment" means appropriate sections of States or "labor areas" so classified by the Secretary of Labor.

(ii) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Persistent Labor Surplus" (also called "Area of Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment," or (B) is certified as an area of persistent labor surplus by the Department of Labor pursuant to a request by a prospective Contractor.

(iii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective Contractor.

(2) The term "labor surplus area concern" includes certified-eligible concerns, persistent labor surplus area concerns, and substantial labor surplus area concerns, as defined below:

(i) "Certified-eligible concern" means a concern (A) located in or near a section of concentrated unemployment or underemployment which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections, and (B) which will agree to perform, or cause to be performed by a certified concern, a substantial proportion of a contract in or near such sections; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns in or near such sections. A concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns

acting as first-tier subcontractors) amount to more than 30 percent of the contract price.

(ii) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(iii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, § 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(4) "Unit price" shall include evaluation factors added for the rent-free use of Government property.

(c) *Identification of areas of performance.* Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform, provided, that he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Eligibility based on certification.* Where eligibility for preference is based upon the status of the bidder or bidder's subcontractors as a "certified-eligible concern," the bidder shall furnish with his bid evidence of certification by the Secretary of Labor.

(e) *Agreement.* The bidder agrees that: (1) If awarded a contract as a certified-eligible concern under the set-aside portion of this procurement he will perform, or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment, or underemployment and in the performance of such contract or subcontracts, will employ a proportionate number of disadvantaged persons residing within sections of concentrated unemployment or underemployment in accordance with plans approved by the Secretary of Labor; (2) if awarded a contract as a persistent labor surplus area concern under the set-aside

portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and (3) if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

(2) In requirements contracts involving labor surplus area set-aside, add the following to the above clause:

(f) *Requirements contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(c) (1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the non-set-aside portion, taking into account the evaluation factors for rent-free use of Government property pursuant to Subpart E, Part 13 of this chapter; provided, however, where the successful bidder which establishes the highest award price on the non-set-aside portion is a foreign bidder, the 120 percent rule shall be applied to the evaluated price on the non-set-aside portion (see § 6.104-4 of this chapter) and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notices; provided that, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion, (under the equal low bid procedures of § 2.407-6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion except that where the successful bidder which establishes the highest award price on the non-set-aside portion is a foreign bidder, the award price for the set-aside portion shall be the highest evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) on the non-set-aside portion (see § 6.104-4 of this chapter). A bidder or offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the awards of additional quantities under the set-aside portion

shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price prior to award, acceptance of refunds, or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see §§ 3.201-2(b)(1) and 3.210-3 of this chapter as to negotiation).

(2) When the award price for a non-set-aside portion has been determined and where an award will be made to a labor surplus area concern and the same labor surplus area concern is entitled to receive a set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

§ 1.805-1 General policy.

It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in § 1-802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

§ 1.805-2 Labor surplus area subcontracting program.

The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. In contracts which range from \$5,000 to \$500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in § 1.805-3(a). In contracts which may exceed \$500,000, the contractor is required, pursuant to the clause set forth in § 1.805-3(b), to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

§ 1.805-3 Required clauses.

(a) The "Utilization of Concerns in Labor Surplus Areas" clause set forth below shall be inserted in all contracts in amounts which may exceed \$5,000, except—

(1) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico;

(2) Contracts for services which are personal in nature; and

(3) Contracts for construction.

UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (NOVEMBER 1967)

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in or near sections of concentrated unemployment or underemployment as a certified-eligible concern or in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) Certified-eligible concerns which are also small business concerns; (ii) other certified-eligible concerns; (iii) persistent labor surplus area concerns which are also small business concerns; (iv) other persistent labor surplus area concerns; (v) substantial labor surplus area concerns which are also small business concerns; (vi) other substantial labor surplus area concerns; and (vii) small business concerns which are not labor surplus area concerns.

(b) The "Labor Surplus Area Subcontracting Program" clause below shall be included in all contracts which may exceed \$500,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed \$500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the following clause.

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (NOVEMBER 1967)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Concerns in Labor Surplus Areas" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Concerns in Labor Surplus Areas" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it (i) in or near "Sections of concentrated unemployment or underemployment" as a certified-eligible concern, (ii) "Areas of Persistent Labor Surplus" or (iii) in "Areas of Substantial Labor Surplus," as designated by the Department of Labor. A certified-eligible concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 30 percent of the price of such contracts; a concern shall be deemed to perform a substantial proportion of a contract in a persistent or substantial labor surplus area if the costs that the concern will incur on account of manufacturing or production (by itself or its first-tier subcontractors) in such area amount to more than 50 percent of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of \$500,000 and which contains the clause entitled "Utilization of Concerns in Labor Surplus Areas," that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

§ 1.1202 Mandatory specifications.

(b) * * *

(7) Purchase of items—
(i) For which it is impracticable or uneconomical to prepare a specification (repetitive use of a purchase description containing the essential characteristics of a specification will be construed as evidence of improper use of this exception); or

(ii) Where the purchase involves an item which is the product of private development and the provisions of § 1.304 are complied with; or

(8) Purchases for construction when nationally recognized industry and technical source specifications and standards are available (see § 18.107 of this chapter).

§ 1.1204 Packaging requirements.

(a) Appropriate preservation, packaging, packing, and marking requirements will be included in contracts as applicable. For items having shelf-life limitations, the marking requirements shall include:

(1) Dating or other maximum allowable age or shelf-life limitations from time of delivery from the contractor or otherwise;

(2) Required temperature, humidity or other storage conditions; and

(3) Type I or type II shelf-life data (see MIL-STD 129D) for each unit of material, issue, package, intermediate container and exterior shipping container of packaged and packed items.

See also § 3.409 of this chapter.

(b) The services of packaging technicians shall be used to the maximum extent practicable, for example, for the following purposes:

(1) Development or establishment of preservation, packaging, packing, and marking requirements for individual procurements; and

(2) Assistance in evaluating the reasonableness of contractors' packaging, packing, and marking cost estimates or charges.

(c) The contract administration office shall report and make recommendations concerning unrealistic preservation, packaging, packing, and marking requirements to the purchasing office.

§ 1.1206-1 General.

(a) A purchase description may be used in lieu of a specification when authorized by § 1.1202(b) and, subject to the restriction on repetitive use in § 1.1202(b)(7), where no applicable specification exists. A purchase description should set forth the essential characteristics and functions of the items or materials required. Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby preclude consideration of a product manufactured by another company, unless it is determined that the particular feature is essential to the Government's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item. Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." This technique should be used only when an adequate specification or more detailed description cannot feasibly be made available by means other than reverse engineering (see § 1.304) in time for the procurement under consideration. Purchase descriptions of services to be procured should outline to the greatest degree practicable the specific services the contractor is expected to perform.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

5. In § 2.201(a), new subparagraph (27) is added; and §§ 2.205-5(a), 2.406-3(g), 2.406-4 (e) and (f), and 2.407-6 (a) (2) are revised, as follows:

§ 2.201 Preparation of invitation for bids.

(a) * * * (27) In accordance with § 6.1104 of this chapter, the provisions set forth therein.

§ 2.205-5 Release of bidders mailing lists.

(a) The comprehensive bidders mailing list established by purchasing offices under this section shall be made available to the public upon written request made in accordance with § 1.329 of this chapter. Except as provided in paragraphs (b) and (c) of this section, no information concerning the use of the lists

in a particular procurement, or identification of sources solicited shall be made available to the public prior to award. When it is necessary to dispatch identical information by means of electrical transmission to prospective bidders or offerors, the electrically transmitted message, when released for communications handling, shall be marked "Book Message—Transmit a Single Address Message" to preclude prospective bidders or offerors knowing the names of others solicited. However, information as to sources solicited may be made available to other Government agencies, at their specific request, and upon the condition that the list will not be made available for inspection prior to award to anyone outside the Government.

§ 2.406-3 Other mistakes.

(g) A signed copy of the administrative determination authorizing withdrawal or modification of the bid made in accordance with paragraph (a) of this section shall accompany the appropriate finance center copy of the contract awarded. Each Department shall maintain records of all administrative determinations made in accordance with paragraph (a) of this section, together with a complete statement of the facts involved and the action taken in each case. Copies of all administrative determinations will be included in the contract file.

§ 2.406-4 Disclosure of mistakes after award.

(e) The authorities enumerated in paragraph (c) of this section, and in the Department of the Navy field contracting officers of the Naval Supply Systems Command at activities having available legal counsel representing the Office of the General Counsel, are authorized, without power of redelegation, to deny relief requested by a contractor, due to an alleged mistake regardless of the amount of relief requested where it is determined the evidence is not clear and convincing:

- (1) That a mistake in bid or proposal was made by the contractor or
- (2) That the mistake was mutual or the contracting officer was or should have been on notice of the error prior to the award of the contract.

(f) The contracting officer shall:

- (1) Cite the administrative determination on copies of the contract modification,
- (2) Attach a copy of the administrative determination to the copy of the contract modification for the appropriate finance center, and
- (3) Distribute such determination as may be prescribed by Departmental regulations.

(b) * * *

§ 2.407-6 Equal low bids.

- (a) * * *
- (2) For the purposes of subparagraph (1) of this paragraph, preference shall

be given in the following order of priority:

- (i) Certified-eligible concerns § 1.801 of this chapter that are also small business concerns (§ 1.701 of this chapter),
- (ii) Other certified-eligible concerns,
- (iii) Persistent labor surplus area concerns (§ 1.801 of this chapter) that are also small business concerns (§ 1.701 of this chapter).
- (iv) Other persistent labor surplus area concerns,
- (v) Substantial labor surplus area concerns (§ 1.801 of this chapter) that are also small business concerns,
- (vi) Other substantial labor surplus area concerns,
- (vii) Other small business concerns.

PART 3—PROCUREMENT BY NEGOTIATION

6. Sections 3.108(b) (4), 3.201-2(b) (2), 3.307, and 3.409 are revised; new subparagraphs (67) and (68) are added to § 3.501(b); § 3.507-1(d) is revised; new paragraph (f) is added to § 3.603-1; and § 3.607-4(g) (2) is revised, as follows:

§ 3.108 Negotiation of initial production contracts for technical or specialized military supplies.

(b) * * * (4) The advantages to be gained through obtaining production drawings, e.g., detailed manufacturing, process, and assembly drawings, with rights to use for procurement purposes at the earliest possible date for competitive reprourement purposes by placing production engineering contracts and the first production contract with the developer (see paragraph (d) of this section).

§ 3.201-2 Application.

(b) * * * (2) Procurements made in keeping with the small business programs

- (i) After unilateral determinations for set-asides, or
- (ii) To place the total or any part of the requirements set aside (unilateral or joint) which are not filled by awards to small business concerns, when no other negotiating authority is appropriate and the use of formal advertising is not feasible and practicable (see § 1.706-7 of this chapter); and

§ 3.307 Distribution of copies of determinations and findings.

Copies of each Determinations and Findings shall be distributed in accordance with procedures prescribed by each respective Department: *Provided*, That one copy thereof with respect to (a) negotiated contracts (whether by individual contract or by class of contracts), (b) advance payments, and (c) the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract shall be sent to the appropriate finance center

with the copy of the contract negotiated and executed thereunder.

§ 3.409 Indefinite delivery type contracts.

(a) One of the following indefinite delivery type contracts may be used for procurement where the exact time of delivery is not known at time of contracting.

(b) For items with a shelf-life of less than 6 months, consideration will be given to use of indefinite delivery type contracts with orders to be placed either (1) directly by the users, or (2) by central purchasing offices with deliveries direct to users. See § 1.1204 of this chapter.

§ 3.501 Preparation of request for proposals or request for quotations.

(b) * * *

(67) In accordance with § 6.1104 of this chapter, the provision set forth therein; and

(68) When telegraphic offers are authorized in a solicitation using Standard Form 33 (Solicitation, Offer, and Award), a provision similar to that set forth in § 2.202-2 of this chapter.

§ 3.507-1 Restrictions on disclosure and use of data in proposals and quotations.

(d) Proposals, solicited and unsolicited, shall be maintained and disposed of pursuant to § 1.308 of this chapter and related S2-102.1(xi) and S2-501.

§ 3.603-1 General.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Subpart K, Part 6 of this chapter.

§ 3.607-4 Procedures.

(g) *Payments.* * * *

(2) Receipt from common carrier or post office. When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales documents if available.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

7. In § 4.106-1(e), subparagraphs (4) and (5) are revised and new subparagraph (6) is added; and § 4.114(b) is revised, as follows:

§ 4.106-1 Selection of sources.

(e) *Unsolicited proposals.* * * *

(4) Except as provided in subparagraph (5) of this paragraph, if the contracting officer receives an unsolicited proposal without any restrictive legend, he shall place a cover sheet on the pro-

posal or otherwise clearly mark it substantially as follows—and the terms of the notice shall be complied with—unless the submitter gives a clear written indication that he does not wish to impose any restrictions on the disclosure or use of the data contained in the proposal.

All Government personnel handling this proposal shall exercise extreme care to insure that the information contained herein is not disclosed outside the Government and is not duplicated, used, or disclosed in whole or part for any purpose other than to evaluate the proposal, without the written permission of the submitter (except that if a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use).

This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction.

This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for any disclosure or use of data contained in this proposal.

(5) If the contracting officer receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution and it is necessary or appropriate to obtain an evaluation of the proposal outside the Government by leading scientists, to expeditiously ascertain the scientific merits of the proposal, he shall place a cover sheet on the proposal or otherwise clearly mark it with the legend set forth in subparagraph (4) of this paragraph, as modified by deleting the words "Not Disclosed outside the Government and" and shall obtain written agreement from the outside evaluator not to disclose the information in the proposal outside the Government.

(6) The submitter of an unsolicited proposal is not necessarily entitled to preferential treatment in the award of any contract because of his submission of such a proposal. See § 4.106-2(d)(2).

§ 4.114 Data under research and development contracts.

(b) In planning a developmental procurement, when subsequent production contracts are contemplated, consideration should be given to the need and time required for obtaining a procurement package. The acquisition of rights to use data for procurement is covered by Subpart B, Part 9 of this chapter. The term "procurement package" means plans, drawings, specifications and other descriptive information and data necessary to achieve competition in production contracts.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

8. New §§ 5.705, 5.705-1, and 5.705-2 are added, as follows:

§ 5.705 Procurement of materials from surplus strategic and critical materials stockpile.

§ 5.705-1 General.

The General Services Administration has responsibility for the disposition of

strategic and critical materials which are in excess of national stockpile requirements. These materials are primarily metals, ores, chemicals and similar raw material items, and are listed and described in a GSA Bulletin which is disseminated to procuring activities through Departmental channels.

§ 5.705-2 Procurement of listed materials.

Prior to initiating procurements of materials which are listed as being available for transfer from the General Services Administration, the procuring activity should screen the list to determine whether the requirement may be met through transfer of materials from the GSA. Due consideration should be given to the quantity, quality and location of the material, and to the timeliness of its availability. Detailed information on these excess materials is available from the Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

PART 6—FOREIGN PURCHASES

9. Sections 6.000, 6.300, 6.302, 6.303(g), and 6.304-1 are revised; new paragraph (g) is added to § 6.304-2; § 6.305 is revised; and a new paragraph (d) is added to § 6.402, as follows:

§ 6.000 Scope of part.

This part includes (a) restrictions and procedures affecting procurements of foreign-made items; (b) restrictions on purchases from communist countries or areas; (c) procedures affecting procurements from Canadian sources; (d) guidance on the use of duty-free entry procedures for foreign items generally and for certain Canadian items; (e) special guidance (including pricing guidance) for Military Assistance Program procurements; (f) for procurements from foreign sources, procedures to promote liaison with overseas activities and compliance with government-to-government agreements; and (g) procedures for use of U.S.-owned foreign currency for payment of contracts.

§ 6.300 Scope of subpart.

This subpart implements the customary Defense Appropriation Act restriction on the availability of appropriated funds for the procurement of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, as it has recurred in Defense Appropriation Acts for several years. However, reference should be made to the current Department of Defense Appropriation Act as a check on the current applicability of this subpart. Nothing herein shall affect the applicability of the Buy American Act (see subparts A and B of this part).

§ 6.302 Restriction.

Except as provided in § 6.303, there shall not be procured supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth,

synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; but this does not restrict the procurement of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

§ 6.303 Exceptions.

The restriction of § 6.302 does not apply to the following:

(g) Any articles of food or clothing of any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States, or its possessions cannot be procured as and when needed at U.S. market prices.

§ 6.304-1 Procurement of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, or items containing mohair or cotton.

In general, food, clothing (not covered by § 6.304-2), woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or any form of mohair or cotton, will be procured only if grown, reprocessed, reused, or produced in the United States or its possessions. However, if the contracting officer finds that prices for such domestic supplies are unreasonable, he may refer the matter to the Secretary concerned for determination with respect to § 6.303(g) in accordance with Departmental procedures.

§ 6.304-2 Procurement of items containing wool (except mohair).

(g) See Subpart K of this part, for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

§ 6.305 Contract clause.

In accordance with the requirements of § 6.302, the clause set forth below shall be inserted in all contracts for supplies, and when applicable, in contracts for services.

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (SEPTEMBER 1967)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico: *Provided*, That this clause shall have no effect to the extent that the Secretary has determined as to any such articles that a satisfactory quality and sufficient quantity cannot be procured as and when needed at U.S. market prices: *Provided further*, That nothing herein shall preclude the delivery of foods under this contract which have been

manufactured or processed in the United States, its possessions, or Puerto Rico.

§ 6.402 Exceptions.

(d) See Subpart K of this part, for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

10. In § 6.603-3, in paragraph (a), the clause heading and clause paragraph (d) (iii) are revised, and in paragraph (b), the clause heading and clause paragraph (b) (4) (iii) are revised, as follows:

§ 6.603-3 Contract clauses.

(a) * * *

DUTY-FREE ENTRY FOR CERTAIN SPECIFIED ITEMS (FEBRUARY 1968)

(d) * * *

(iii) The notation: "United States (insert name of Military Department)—duty-free entry to be claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, Collector of Customs, kindly notify the (insert title and address of Government representative; if the shipment is arriving from Canada, insert Director, Defense Contract Administration Services Region, Detroit, 1580 East Grand Boulevard, Detroit, Mich. 48211), will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate."

(b) * * *

NOTICE OF IMPORTS—POSSIBLE DUTY-FREE ENTRY (FEBRUARY 1968)

(b) * * *

(4) * * *

(iii) The notation: "United States (insert name of Military Department)—duty-free entry to be claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival at port of entry, Collector of Customs, kindly notify the (insert title and address of Government representative; if the shipment is arriving from Canada, insert Director, Defense Contract Administration Services Region, Detroit, 1580 East Grand Boulevard, Detroit, Mich. 48211), who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate."

11. Section 6.603-4 is revised; in § 6.605-2, the clause heading and clause paragraph (d) (iii) are revised; and §§ 6.605-4 and 6.805-2(a) (8) and (9) are revised, as follows:

§ 6.603-4 Customs entries and duty-free certificates.

(a) When the clause set forth in § 6.603-3(a) or (b) is used, the title and address of the Government representative responsible for preparing the Consumption Entry (Customs Form 7501) and Consumption Entry Permit (Customs Form 7501A) and executing the duty-free certificate shall be included in such clause. For procedures applicable to Canadian supplies, see § 6.605-4(a).

(b) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clauses set forth in § 6.603-3 or authorized by § 6.605, the contractor shall be notified that the foreign supplier is to include

on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(c) The designated Government representative shall retain the memorandum copy of the bill of lading (or other shipping document) pending notification by the Collector of Customs that the shipment has been released. The notification will contain a request for Customs Form 7501, Customs Form 7501A, and the duty-free entry certificate.

(d) Upon receipt of a request for duty-free entry, the designated Government representative shall promptly prepare the required Customs Forms and execute the duty-free entry certificate in accordance with paragraph (e) of this section and forward two copies of Customs Form 7501 and one copy of Customs Form 7501A to the Collector of Customs submitting the request.

(e) The duty-free entry certificate referred to in this section shall be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto in the following form:

(FEBRUARY 1968)

I certify that the procurement of this material constituted an emergency purchase of war material abroad by the (indicate Department of the Army, Department of the Navy, Department of the Air Force, or Defense Supply Agency) and it is accordingly requested that such material be admitted free of duty pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(Name)

((Title), who has been designated to execute free entry certificates for the above named (Department or Agency))

(Organization)

§ 6.605-2 Contract clause.

DUTY-FREE ENTRY—CANADIAN SUPPLIES (FEB. 1968)

(d) * * *

(iii) The notation: "United States (insert name of Military Department)—Duty-free entry to be claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, Collector of Customs, kindly notify the Director, Defense Contract Administration Services Region, Detroit, 1580 East Grand Blvd., Detroit, Mich. 48211, who will execute Forms 7501 and 7501A and the Duty-Free Entry Certificate."

§ 6.605-4 Customs entries and duty-free certificates—Canadian supplies.

(a) Pursuant to the clause set forth in §§ 6.603-3(a), 6.603-3(b), or 6.605-2 (as may be modified in accordance with

§ 6.605-3), the Defense Contract Administration Services Region, Detroit, shall execute Customs Forms 7501 and 7501A and the duty-free entry certificate for imports from Canada which are to be accorded duty-free entry. Accordingly, whenever a prime contract involving Canadian supplies contains one of the foregoing clauses, the contract administration office designated in the contract shall furnish DCASR, Detroit, with information substantially as follows.

To: Director, DCASR, Detroit, Attn: DCRD-PT.

Contract ----- issued to ----- contains:
(Contractor)

- ☐ ASPR Clause 6-605.2, Duty-Free Entry—Canadian Supplies,
☐ ASPR Clause 6-603.3(b), Notice of Imports—Possible Duty-Free Entry,
☐ ASPR Clause 6-603.3(a), Duty-Free Entry for Certain Specified Items,
which provides for the following supplies to be accorded duty-free entry. (The contract schedule setting forth these supplies may be furnished in lieu of this listing:)

This contract is expected to be completed by -----

(Signature)

(Title)

(b) Duty-free entry certificates shall be issued in accordance with the procedures set out in § 6.603-4.

§ 6.605-2 Procurement limitations.

(a) * * *

(8) *Miscellaneous exceptions.* (i) Procurement of the requirements listed below, providing they do not duplicate or replace an existing organic service capability:

(a) Utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;

(b) Communications services;

(c) Port handling, stevedoring, and other port charges;

(d) Maintenance and repair of, and procurement of spare parts for, foreign manufactured vehicles, equipment, machinery and systems; provided, in the case of parts, that this exception applies only if the procurement must be restricted to the original manufacturer or his supplier in accordance with § 1.313 of this chapter;

(e) Packing and crating services;

(f) Laundry and dry cleaning;

(g) Handling and storage requirements;

(h) Industrial gases;

(i) Transportation services;

(j) Into-plane refueling;

(k) Drugs specified by the Defense Medical Materiel Board; and

(l) The following bulk construction materials: sand, gravel, stone, concrete masonry units; and fired brick.

(ii) Procurement of the requirements listed below, provided that foreign cost is estimated not to exceed \$10,000:

- (a) Custodial services;
(b) Services of part-time instructors;
(c) Printing of base newspapers;
(d) Dry ice; and

(e) Other mandatory requirements for contractual services which by their nature can only be performed locally and where an organic capability does not exist.

(9) *Excess and near-excess foreign currencies.* Procurements made with excess or near-excess foreign currencies when procurement costs are in accordance with § 6.1106.

12. A new Subpart K is added, as follows:

Subpart K—Use of United States-Owned Foreign Currency for Payments of Contracts

- | | |
|----------|---|
| Sec. | Scope of subpart. |
| 6.1101 | Applicability. |
| 6.1102 | Definitions. |
| 6.1103 | Solicitation procedure. |
| 6.1104 | Evaluation of offers. |
| 6.1105-1 | Conversion for evaluation purposes. |
| 6.1105-2 | Excess foreign currency offers. |
| 6.1105-3 | Near-excess foreign currency offers. |
| 6.1105-4 | Consideration of combination offers. |
| 6.1105-5 | Evaluation table. |
| 6.1106 | Awards. |
| 6.1106-1 | Basis. |
| 6.1106-2 | Awards by the contracting officer. |
| 6.1106-3 | Awards requiring approval by higher authority. |
| 6.1107 | Determinations of nonfeasibility and contract certifications. |
| 6.1108 | Criteria for nonfeasibility determinations. |
| 6.1109 | Excess and near-excess currency countries. |
| 6.1110 | Contracts with domestic concerns. |

AUTHORITY: The provisions of this Subpart K issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 6.1101 Scope of subpart.

This subpart implements the Government's policy that U.S.-owned foreign currency be used when feasible if payment of purchases in foreign countries.

§ 6.1102 Applicability.

(a) This subpart applies to procurements of supplies, services, or construction for use outside the United States.

(b) This subpart does not apply to procurements (1) funded from Special Foreign Currency Program Appropriations or (2) made under Subpart A of this part.

§ 6.1103 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

(a) "U.S.-owned foreign currency" means currency of a foreign country which currency is (1) owned by the United States; (2) determined excess or near-excess by the U.S. Department of the Treasury; (3) available in the country of issuance to pay obligations of the United States within that country; and (4) disbursed by the U.S. Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

(b) "Excess foreign currency" means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in § 6.1109(a).

(c) "Near-excess foreign currency" means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in § 6.1109(b).

(d) "U.S. dollar content" means the U.S. dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

§ 6.1104 Solicitation procedure.

(a) Except as provided in paragraph (c) of this section, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the following provision when it can reasonably be expected that (1) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency, or (2) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

AWARD AND PAYMENT (DECEMBER 1967)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of U.S. dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the U.S. dollar content, if any, in U.S. dollars. The term "U.S. dollar content" means the U.S. dollar cost to an offeror for U.S. end products or services (including costs of transportation furnished by U.S.-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payments in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the U.S. Government, even though the total price of the accepted offer may be more than the price of an offer received in U.S. dollars.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described in Subpart F, Part 3 of this chapter, for delivery within a country in which there is U.S.-owned foreign currency shall be limited to the local trade area of that country; and, to the extent feasible within the criteria in § 6.1108, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

RULES AND REGULATIONS

§ 6.1105 Evaluation of offers.

§ 6.1105-1 Conversion for evaluation purposes.

For purposes of evaluation, offers expressed in whole or in part in U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

§ 6.1105-2 Excess foreign currency offers.

Subject to § 6.1105-4 and to the award limitations in § 6.1106, preference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(a) The lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(b) Where the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(c) Where the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(d) Where responsive offers in combinations described in paragraphs (b) and (c) of this section are received, the lowest offer evaluated under paragraph (b) of this section.

(e) Where responsive offers are received in U.S. dollars only, the lowest such offer. If equal low offers are received and one or more contain a U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

§ 6.1105-3 Near-excess foreign currency offers.

The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S. dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

§ 6.1105-4 Consideration of combination offers.

When responsive offers received include some which are priced only in U.S. dollars and others in combinations of

U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S. dollars only.

§ 6.1105-5 Evaluation table.

The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

EVALUATION TABLE

OFFERS RECEIVED ARE PRICED IN U.S. DOLLARS AND "X" COUNTRY'S RUPEES APPLICABLE EXCHANGE RATE ASSUMED FOR THIS TABLE IS 3 RUPEES=1 DOLLAR

Offers	In excess currency only	In combination excess currency—U.S. dollars	In U.S. dollars only	In U.S. dollars as converted (see § 6.1105-1)	U.S. dollars content	Preference	
						For award	See footnote
1	360R			\$120	0	1	3
2		60R+\$80		(\$20+\$80) \$100	0	6	4
3		18R+\$95		(\$6+\$95) \$101	0	7	4
4		60R+\$90		(\$20+\$90) \$110	0	7	4
5			\$94	\$94	0	9	5
6	450R			\$150	\$50	2	3
7		60R+\$90		(\$20+\$90) \$110	90	4	4
8			94	\$94	50	8	5
9	450R			\$150	0	3	3
10		60R+\$80		(\$20+\$80) \$100	50	5	4

NOTES TO EVALUATION TABLE

1. All offers are assumed to be responsive.
2. The lowest offer in U.S. dollars only is \$94. Therefore, \$141 (\$94.00+47) is the maximum amount for which the contracting officer has authority to award without referral under § 6.1106-2.

3. Offers Nos. 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer No. 1, being the lowest, is preferred for award. In the absence of Offer No. 1, Offer No. 6 would be preferred because it contains a U.S. dollar content of \$50. In the absence of Offers Nos. 1 and 6, Offer No. 9 would be preferred. In accepting Offer No. 1, 6 or 9, the DoD Appropriation would be charged \$94 (see § 6.1106-1). Before Offer No. 6 or 9 could be accepted, they would require referral under § 6.1106-2.

4. Offers Nos. 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers Nos. 1, 6, and 9 or in the absence of Offer No. 1 and in case Offers Nos. 6 and 9 were not approved by higher authority after referral under § 6.1106-2. Offer No. 7 would be preferred over Offers Nos. 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S. dollars is limited to that content. In the absence of Offer No. 7, Offer No. 10 would be preferred over Offers Nos. 2, 3, and 4 because it contains a U.S. dollar content of \$50, and, although the part to be paid in U.S. dollars is more than that content, it would result in the least expenditure of U.S. dollars. In the absence of Offers Nos. 7 and 10, Offer No. 2 would be preferred over Offers Nos. 3 and 4 because it would result in the least expenditure of U.S. dollars. In the absence of Offers Nos. 2, 7, and 10, Offer No. 4 would be preferred. Offer No. 3 could not be considered for award because the U.S. dollar amount (\$95) exceeds the lowest offer in U.S. dollars (\$94) (see § 6.1105-4).

5. Offers Nos. 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the absence of all other offers except Nos. 6 and 9 and in case those offers were not approved by higher authority after referral under § 6.1106-2. Offer No. 8 would be preferred to Offer No. 5 because it contains a U.S. dollar content of \$50.

§ 6.1106 Awards.

§ 6.1106-1 Basis.

Award shall be made in accordance with §§ 6.1106-2 and 6.1106-3. When un-

reasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar item exists, the proposed procurement shall be referred to higher authority.

§ 6.1106-2 Awards by the contracting officer.

The contracting officer shall have authority to award contracts as follows:

(a) To the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50 percent and the lowest responsive offer in U.S. dollars does not exceed \$50,000. (The cost to the Department of Defense appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(b) To the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(c) To the offeror submitting the lowest responsive offer entirely in U.S. dollars: *Provided*, That payment in U.S. dollars is authorized under § 6.1108 (Where a foreign purchase is contemplated under § 6.805-2(a) (9) and is not otherwise excepted, and where payment is to be made in U.S. dollars only, the procurement shall be made in accordance with § 6.806-1.).

§ 6.1106-3 Awards requiring approval by higher authority.

(a) The contracting officer shall refer the proposed procurement to the appropriate official listed in (c) below when:

(1) The lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than 50% regardless of the U.S. dollar cost of the contract;

(2) The lowest responsive U.S. dollar offer exceeds \$50,000; or

(3) The lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(b) The contracting officer shall refer the case expeditiously describing, as a minimum, the procurement involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and his recommendation as to which offer, if any, should be accepted.

(c) The Secretaries of the Military Departments, the Director of Defense Research and Engineering, the Directors of Defense Agencies, and the Assistant Secretary of Defense (Administration), or their designees, shall determine whether a proposed procurement described in paragraph (a) of this section shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

§ 6.1107 Determinations of nonfeasibility and contract certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in § 6.1108 to use U.S.-owned foreign currency for payment of a contract he shall execute a Contract Certification in the following format.

CONTRACT CERTIFICATION

I hereby certify that it is not feasible to make payment under this contract in the country of _____ in the amount of \$_____ from United States-owned foreign currency for the reason stated. (cite the applicable criterion.)

(Signature)

(Typed named and title of contracting officer)

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with Departmental instructions.

§ 6.1108 Criteria for nonfeasibility determinations.

The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(a) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned;

(b) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a Treaty, Executive Agreement, or law of the country concerned requires payments to be made in U.S. dollars;

(c) Responsive offers require payment in U.S. dollars in whole or in part;

(d) The only responsive offers received require payment entirely in U.S. dollars;

(e) The procurement is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon;

(f) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in U.S. dollars has been authorized by the proper authority under § 6.1106-2(c).

§ 6.1109 Excess and near-excess currency countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries.

Country	Currency
Burma	Kyat.
Ceylon	Rupee.
Congo (Kinshasha)	Franc.
Guinea	Franc.
India	Rupee.
Israel	Pound.
Pakistan	Rupee.
Poland (See also Subpart D of this part)	Zloty.
Tunisia	Dinar.
United Arab Republic (Egypt)	Pound.
Yugoslavia	Dinar.

(b) The Department of the Treasury holds near-excess foreign currency in the following countries:

Country	Currency
Bolivia	Peso.
Ghana	New Ghanaian Cedis.
Indonesia	Rupiah.
Morocco	Dirham.
Sudan	Pound.

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Military Departments to their disbursing officers.

§ 6.1110 Contracts with domestic concerns.

The following clause shall be included in any contract with a domestic concern (see § 6.001(e)) when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

ACQUISITION AND USE OF EXCESS AND NEAR-EXCESS CURRENCY (DECEMBER 1967)

The Contractor shall not expend U.S. dollars for the performance of this contract in any of the countries set forth in the Schedule of this contract for the purchase of currency of such countries or for the purchase of goods or services needed for performance under this contract. The Contractor shall purchase all such currencies from U.S. disbursing officers in such countries at the rates of exchange used by such officers at the times of purchase.

PART 7—CONTRACT CLAUSES

13. The introductory sentence of § 7.104-15 is revised; § 7.104-63 is revised; new §§ 7.104-65 and 7.104-66 are added; in § 7.203-4(b), the clause heading and clause paragraph (i) are revised; and § 7.204-46 is added, as follows:

§ 7.104-15 Examination of records.

Pursuant to 10 U.S.C. 2313(b), the following clause will be inserted in all negotiated fixed-price supply contracts in excess of \$2,500, including contracts awarded under a total (small business restricted advertising) or partial set-aside, except as provided in §§ 6.704 and 6.1001 of this chapter.

§ 7.104-63 Protection of Government buildings, equipment and vegetation.

Insert the following clause in all contracts which involve the performance of services on a Government installation.

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (FEBRUARY 1968)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Government installation. If the Contractor fails to do so and damages any such buildings, equipment, or vegetation, he shall replace or repair the damage at no expense to the Government as directed by the Contracting Officer. If he fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof which may be deducted from the contract price.

§ 7.104-65 Insurance.

Insert the clause in § 10.405 of this chapter, in accordance with the instructions therein, in contracts requiring the performance of work on a Government installation.

§ 7.104-66 Use of excess and near-excess currency.

In accordance with the requirements of § 6.1110 of this chapter, insert the clause set forth therein.

§ 7.203-4 Allowable cost, fee, and payment.

(b) * * *

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT (FEBRUARY 1968)

(i) The fee payable hereunder shall be the target fee increased by (insert contractor's participation) cents for every dollar by which the total allowable cost is less than the target cost or decreased by (insert contractor's participation) cents for every dollar by which the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ percent, nor less than _____ percent, of the target cost; and, except as provided in (j) below, within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (f) (i) above, and claims excepted from the release required by (f) (ii) above. If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The terminations shall be otherwise accomplished pursuant to other applicable provisions of this contract.

§ 7.204-46 Use of excess and near-excess currency.

In accordance with the requirements of § 6.1110 of this chapter, insert the clause set forth therein.

14. New §§ 7.303-46, 7.303-47, and 7.403-43 are added; § 7.602-29 is revised; in § 7.602-42(a), the clause heading and clause paragraph (a) are revised; and new §§ 7.603-46, 7.603-47, and 7.606-18 are added, as follows:

§ 7.303-46 Insurance.

Insert the clause in § 10.405 of this chapter, in accordance with the instructions therein, in contracts requiring the performance of work on a Government installation.

§ 7.303-47 Use of excess and near-excess currency.

In accordance with the requirements of § 6.1110 of this chapter, insert the clause set forth therein.

§ 7.403-43 Use of excess and near-excess currency.

In accordance with the requirements of § 6.1110 of this chapter, insert the clause set forth therein.

§ 7.602-29 Termination for convenience of the Government.

Insert the clause set forth in § 8.701(a) as modified by § 8.701(b) of this chapter.

§ 7.602-42 Accident prevention.

(a) * * *

ACCIDENT PREVENTION (JUNE 1967)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of this contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1, dated March 1, 1967, entitled "General Safety Requirements," as amended, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose.

§ 7.603-46 Insurance.

Insert the clause in § 10.405 of this chapter, in accordance with the instructions therein, in contracts requiring the performance of work on a Government installation.

§ 7.603-47 Use of excess and near-excess currency.

In accordance with the requirements of § 6.1110 of this chapter, insert the clause set forth therein.

§ 7.606-18 Use of excess and near-excess currency.

In accordance with the requirements of § 6.110 of this chapter, insert the clause set forth therein.

15. Section 7.607-7 is revised; new §§ 7.608 and 7.608-1 are added; in § 7.702-22, a new sentence of text is added following the contract clause; § 7.703-18 is revised; and new §§ 7.705-20 and 7.705-21 are added, as follows:

§ 7.607-7 Termination for convenience of the Government.

Insert the clause set forth in § 8.701(a) of this chapter as modified by § 8.701(c) or § 8.705-2 as appropriate.

§ 7.608 Clauses to be used when applicable for lump sum architect-engineer contracts.

§ 7.608-1 Insurance.

Insert the clause in § 10.405 of this chapter, in accordance with the instructions therein, in contracts requiring the performance of work on a Government installation.

§ 7.702-22 Termination of work.

In accordance with § 163.119 of this chapter, the last sentence of paragraph (h) in the above clause may be deleted in contracts with agencies of the U.S. Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 7.703-18 Termination of work.

In accordance with the instructions of § 7.702-22, insert the contract clause set forth therein.

§ 7.705-20 Insurance.

Insert the clause in § 10.405 of this chapter, in accordance with the instructions therein, in contracts requiring the performance of work on a Government installation.

§ 7.705-21 Use of excess and near-excess currency.

In accordance with the requirements of § 6.1110 of this chapter, insert the clause set forth therein.

16. In § 7.901-4, a sentence of text is added following the contract clause; § 7.901-5(a) is revised; new §§ 7.902-26 and 7.902-27 are added; in § 7.1002-20, the clause heading and clause paragraph (a) (iii) are revised; and § 7.1401-3 is revised, as follows:

§ 7.901-4 Termination.

In accordance with § 163.119 of this chapter, the last sentence of paragraph (i) in the above clause may be deleted in contracts with agencies of the U.S. Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 7.901-5 Government property.

Insert the clause set forth in § 13.703 of this chapter except that:

(a) The phrase "estimated cost, fixed-fee or delivery or performance dates, or all of them," appearing in lines 14, 15, 23, and 24 of paragraph (a) shall be deleted and the phrase "ceiling price, hourly rate, the delivery or performance date, or all of them," substituted therefor;

§ 7.902-26 Insurance.

Insert the clause in § 10.405 of this chapter, in accordance with the instructions therein, in contracts requiring the performance of work on a Government installation.

§ 7.902-27 Use of excess and near-excess currency.

In accordance with the requirements of § 6.1110 of this chapter, insert the clause set forth therein.

§ 7.1002-20 Liability and insurance.

LIABILITY AND INSURANCE (OCTOBER 1967)

(a) The Contractor shall be:

(iii) responsible for, and hold the Government harmless from, bodily injury and death of persons,

occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents, or employees in the performance of work under this contract. For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable. The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor. Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the "Disputes" clause of this contract. The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations.

§ 7.1401-3 Specifications.

SPECIFICATIONS (FEBRUARY 1968)

All work under this contract shall be accomplished in accordance with specifications MIL-STD-665A and MIL-STD-666A, amendments or revisions thereto, and any other Federal or Military Specifications or Standards cited herein.

PART 8—TERMINATION OF CONTRACTS

17. Part 8 is revised to read as follows:

Sec. 8.000	Scope and applicability of part.
Subpart A—Definition of Terms	
8.101	Definitions.
8.101-1	Amount of claims or settlement.
8.101-2	Common items.
8.101-3	Continued portion of the contract.
8.101-4	Contractor-acquired property.
8.101-5	Contractor inventory.
8.101-6	Disbursing officer.
8.101-7	Effective date of termination.
8.101-8	Government-furnished property.
8.101-9	Material.
8.101-10	Other work.
8.101-11	Partial termination.
8.101-12	Plant clearance period.
8.101-13	Plant equipment.
8.101-14	Prime contract.
8.101-15	Industrial plant equipment.
8.101-16	Salvage.
8.101-17	Scrap.
8.101-18	Serviceable or usable property.
8.101-19	Settlement agreement.
8.101-20	Settlement proposal.
8.101-21	Special machinery and equipment.
8.101-22	Special tooling.
8.101-23	Special test equipment.
8.101-24	Subcontract.
8.101-25	Termination claim.
8.101-26	Termination inventory.
8.101-27	Terminated portion of the contract.
8.101-28	Unadjusted contract changes.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

- 8.200 Scope of subpart.
- 8.201 Authority of contracting officers.
- 8.202 Prior clearance of significant contract terminations.
- 8.203 Notice of termination.
- 8.204 Methods of settlement.
- 8.205 Duties of prime contractor after receipt of notice of termination.
- 8.206 Duties of termination contracting officer after issuance of notice of termination.
- 8.206-1 Termination of status report.
- 8.206-2 Release of excess funds.
- 8.206-3 Termination case file.
- 8.207 Fraud or other criminal conduct.
- 8.208 Audit of prime contract settlement proposals and of subcontract settlements.
- 8.209 Settlement of subcontract claims.
- 8.209-1 Subcontractor's rights.
- 8.209-2 Prime contractor's rights and obligations.
- 8.209-3 Settlement procedure.
- 8.209-4 Authorization for subcontract settlements without approval or ratification.
- 8.209-5 Recognition of judgments and arbitration awards.
- 8.209-6 Delay in settlement of subcontractor claims.
- 8.209-7 Government assistance in settlement of subcontracts.
- 8.209-8 Assignment of rights under subcontracts.
- 8.210 Settlement agreements.
- 8.210-1 General.
- 8.210-2 Reserved items.
- 8.210-3 Government property.
- 8.210-4 No-cost settlement.
- 8.210-5 Partial settlements.
- 8.210-6 Joint settlement of two or more claims.
- 8.210-7 Settlement by determination.
- 8.211 Contracting Officer's negotiation memorandum.
- 8.212 Review and Approval of proposed settlements.
- 8.212-1 Settlement review boards.
- 8.212-2 Required review and approval.
- 8.212-3 Scope of review.
- 8.212-4 Action by board.
- 8.212-5 Subcontracts.
- 8.213 Payment.
- 8.213-1 Partial payments upon termination.
- 8.213-2 Final payment.
- 8.214 Cost principles applicable to the settlement of research and development contracts with educational institutions.
- 8.215 Settlement of unadjusted contract changes.
- 8.216 Terminated contracts with Canadian Commercial Corp.
- 8.217 Settlement of terminated contracts with incentive provisions.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Type Contracts

- 8.301 General.
- 8.302 Cost principles.
- 8.303 Allowance for profit.
- 8.304 Adjustment for loss.
- 8.305 Deductions.
- 8.306 Completed end items.
- 8.307 Settlement proposals.
- 8.307-1 Submission of settlement proposals.
- 8.307-2 Bases for settlement proposals.
- 8.308 Limitations on settlements.

- 8.309 Equitable adjustment in unit prices under fixed-price contracts in cases of partial termination.

Subpart D—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

- 8.401 General considerations.
- 8.402 Discontinuance of vouchers.
- 8.403 Notice to the General Accounting Office.
- 8.404 Procedure after Vouchers are discontinued.
- 8.404-1 Submission of settlement proposal.
- 8.404-2 Interim negotiations.
- 8.404-3 Partial payments.
- 8.404-4 Adjustment of overhead costs.
- 8.404-5 Information concerning previous cost vouchers.
- 8.404-6 Notice to General Accounting Office of audit status date.
- 8.404-7 Exceptions by the General Accounting Office.
- 8.404-8 Final settlement.
- 8.405 Procedure for partial termination.
- 8.405-1 General.
- 8.405-2 Submission of Settlement proposal (fee only).
- 8.405-3 Submission of vouchers.
- 8.406 Adjustment of fee.
- 8.407 Termination for default.

Subpart E—[Reserved]

Subpart F—Termination for Default

- 8.600 Scope of subpart.
- 8.601 General.
- 8.602 Termination of fixed-price supply contracts for default.
- 8.602-1 The Government's right to terminate for default.
- 8.602-2 Effect of termination for default.
- 8.602-3 Procedure for default.
- 8.602-4 Procedure in lieu of termination for default.
- 8.602-5 Memorandum by the contracting officer.
- 8.602-6 Repurchase against contractor's account.
- 8.602-7 Other damages.

Subpart G—Clauses

- 8.700 Scope of subpart.
- 8.701 Termination clause for fixed-price contracts.
- 8.702 Termination clause for cost-reimbursement type contracts.
- 8.703 [Reserved].
- 8.704 Research and development contracts with educational and other nonprofit institutions.
- 8.704-1 Termination clause.
- 8.704-2 Suggested clause for subcontracts.
- 8.705 Short form termination clauses for fixed-price type contracts.
- 8.705-1 Supply and service contracts.
- 8.705-2 Construction contracts.
- 8.705-3 Architect-engineer contracts.
- 8.706 Subcontract termination clause.
- 8.707 Default clause for fixed-price supply contracts.
- 8.708 Excusable delays clause for cost-reimbursement type contracts.
- 8.709 Default clause for fixed-price construction contracts.
- 8.710 Default clause for fixed-price research and development contracts.
- 8.711 Default clause for fixed-price architect-engineer contracts.

Subpart H—Forms

- 8.800 Scope of subpart.
- 8.801 Notice of termination.
- 8.801-1 Telegraphic notice of termination.
- 8.801-2 Letter notice of termination.

- 8.802 Forms for settlement of fixed-price contracts.
- 8.802-1 DD Form 540—Settlement Proposal—Inventory Basis.
- 8.802-2 DD Form 541—Settlement Proposal—Total Cost Basis.
- 8.802-3 DD Form 831—Settlement Proposal—Short Form.
- 8.802-4 DD Form 542—Inventory Schedule A—Metals in Mill Product Form and DD Form 542c—Inventory Schedule A—Continuation Sheet.
- 8.802-5 DD Form 543—Inventory Schedule B—Raw Materials and DD Form 543c, Inventory Schedule B—Continuation Sheet.
- 8.802-6 DD Form 544—Inventory Schedule C—Work in Process and DD Form 544c—Inventory Schedule C—Continuation Sheet.
- 8.802-7 DD Form 545—Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools; and DD Form 545c—Inventory Schedule D—Continuation Sheet.
- 8.802-8 DD Form 832—Inventory Schedule E—Short Form for Use with DD Form 831 Only.
- 8.802-9 DD Form 546—Schedule of Accounting Information.
- 8.802-10 DD Form 548—Application for Partial Payment.
- 8.802-11 DD Form 1598—Contract Termination Status Report.
- 8.803 DD Form 547—Settlement Proposal for Cost-Reimbursement Type Contracts.
- 8.804 DD Form 547s—Notice of Audit Status Date.
- 8.805 Forms of settlement agreement.
- 8.805-1 Settlement agreement for use in settling fixed-price prime contracts after complete termination.
- 8.805-2 Settlement agreements for use in settling fixed-price prime contracts after partial termination.
- 8.805-3 Partial settlement agreement for use in settling fixed-price prime contracts after complete or partial termination where settlement pertains only to settlements with subcontractors.
- 8.805-4 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement includes costs.
- 8.805-5 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement is limited to fee.
- 8.805-6 No cost settlement agreement—partial termination.
- 8.805-7 No cost settlement agreement—complete termination.
- 8.805-8 Settlement agreement for use in settling cost-reimbursement type price contracts after partial termination.
- 8.805-9 Format for settlement of reservations.
- 8.806 DD Form 1114—Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
- 8.807 Format for the release of excess funds under terminated contracts.
- 8.808 Format for termination contracting officer's settlement memorandum for fixed-price type contract terminated for convenience of the Government.
- 8.809 Format for termination contracting officer's settlement memorandum for cost-reimbursement type contracts.

- 8.810 Format for application for grant of authorization.
 8.810-1 Format of letter of authorization.
 8.811 Delinquency notices.

AUTHORITY: The provisions of this Part 8 issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 3.000 Scope and applicability of part.

(a) This part establishes uniform policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It includes uniform contract clauses with respect to termination and excusable delay, and approved termination and settlement forms.

(b) This part applies to contracts which by their terms provide for termination for the convenience of the Government or for the default of the contractor, whether or not the clauses in the contract with respect to termination and excusable delay are those set forth in subpart G of this part. In the event the clauses actually used in the contract are properly authorized termination clauses and are inconsistent with the provisions of this part, the clauses actually used shall control to the extent of the inconsistency. Contracts which do not contain the applicable clauses may, where it is in the best interest of the Government, be amended by agreement prior to or after termination of the contract, to include or substitute such a clause. The provisions of this part, unless inappropriate, shall be used to settle (1) subcontracts terminated as a result of modification of a prime contract, and (2) shall be used as a guide by the contracting officer in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever such settlement is to be the basis of a claim for reimbursement from the Government by a contractor under a cost-reimbursement type contract.

(c) The provisions of this part may be utilized in determining any equitable adjustment as a result of modification of any contract other than a cost-reimbursement type contract pursuant to the Changes clause.

Subpart A—Definition of Terms

§ 3.101 Definitions.

As used in this part, the following terms have the meaning stated below:

§ 3.101-1 Amount of claim or settlement.

When the action to be taken under this part depends upon the amount of a termination claim or settlement, then, in determining such amount (a) credits for retention or other disposal of termination inventory allocated to the claim and for advance or partial payments shall not be deducted from the gross claim or settlement; but (b) amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors, shall be deducted.

§ 3.101-2 Common items.

Common items means material which is common in nature to both the terminated contract and the contractor's other work.

§ 3.101-3 Continued portion of the contract.

Continued portion of the contract means that portion of a partially terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor must continue to perform.

§ 3.101-4 Contractor-acquired property.

Contractor-acquired property is property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

§ 3.101-5 Contractor inventory.

Contractor inventory means (a) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and (b) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

§ 3.101-6 Disbursing officer.

Disbursing officer means the officer or agent of the office designated as the paying office under the contract.

§ 3.101-7 Effective date of termination.

Effective date of termination means the date upon which the notice of termination first requires the contractor to stop performance, in whole or in part, under the contract. If, however, the termination notice is received subsequent to the date fixed for termination, then the effective date of termination means the date on which the notice is received.

§ 3.101-8 Government-furnished property.

Government-furnished property is property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the contractor.

§ 3.101-9 Material.

Material means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies

which may be consumed in normal use in the performance of the contract.

§ 3.101-10 Other work.

Other work means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

§ 3.101-11 Partial termination.

Partial termination means the termination of a part, but not all, of the work which has not been completed and accepted under a contract.

§ 3.101-12 Plant clearance period.

Plant clearance period means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 90 days after receipt by the termination contracting officer (TCO) of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the TCO and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory scheduled covering all items of the particular property classification at the plant or location.

§ 3.101-13 Plant equipment.

Plant equipment means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

§ 3.101-14 Prime contract.

Prime contract means any contract as defined in § 1.201-4 of this chapter entered into by any Department or procuring activity.

§ 3.101-15 Industrial plant equipment.

Industrial plant equipment means that part of plant equipment with an acquisition cost of \$1,000 or more which is listed in § 13.312 of this chapter and is reportable to the Defense Supply Agency for screening in accordance with § 24.205-3 of this chapter.

§ 3.101-16 Salvage.

Salvage means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

§ 3.101-17 Scrap.

Scrap means property that has no reasonable prospect of being sold except

for the recovery value of its basic material content.

§ 8.101-18 Serviceable or usable property.

Serviceable or usable property means property that has reasonable prospect of sale or use either in its existing form or after minor repairs or alterations.

§ 8.101-19 Settlement agreement.

Settlement agreement means a written agreement in the form of an amendment to the contract, between the contractor and the Government settling all or a severable portion of a settlement proposal.

§ 8.101-20 Settlement proposal.

Settlement proposal means a termination claim submitted by a contractor or subcontractor in the form, and supported by the data, required by this part.

§ 8.101-21 Special machinery and equipment.

Special machinery and equipment means that part of plant equipment which was acquired or constructed solely for the performance of the terminated contract or the terminated contract and other Government contracts, and as to which the contractor claims loss of useful value.

§ 8.101-22 Special tooling.

Special tooling shall have the meaning given in § 13.101-5 of this chapter.

§ 8.101-23 Special test equipment.

Special test equipment shall have the meaning given in § 13.101-6 of this chapter.

§ 8.101-24 Subcontract.

Subcontract means any contract as defined in § 1.201-4 of this chapter other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

§ 8.101-25 Termination claim.

Termination claim means any claim by a contractor or subcontractor, permitted by the terms of a prime contract, for compensation for the termination, in whole or in part, of the prime contract or a subcontract thereunder, and any other claim which this part authorizes to be asserted and settled in connection with a termination settlement.

§ 8.101-26 Termination inventory.

Termination inventory means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, special test equipment, material, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished

property as defined in §§ 8.101-4 and 8.101-8.

§ 8.101-27 Terminated portion of the contract.

Terminated portion of the contract means that portion of a terminated contract which relates to work or end terms not already completed and accepted prior to the effective date of termination and which the contractor is not to continue to perform.

§ 8.101-28 Unadjusted contract changes.

Unadjusted contract changes are any contract changes or contract provisions as to which a definitive modification is required but has not been executed.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 8.200 Scope of subpart.

This subpart deals with:

(a) The authority of contracting officers to terminate contracts in whole or in part (1) for the convenience of the Government; and (2) in the case of cost-reimbursement type contracts for default;

(b) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(c) General procedures for the settlement of terminated contracts; and

(d) Settlement agreements.

Subpart C sets forth additional principles applicable only to fixed-price type contracts. Subpart D sets forth additional principles applicable only to cost-reimbursement type contracts. Subpart F sets forth the principles applicable to the termination of fixed-price type contracts for default.

§ 8.201 Authority of contracting officers.

(a) The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this subchapter is usually found in the termination clause or other provisions of the contract.

(b) Contracts shall be terminated, whether for default or convenience, only when such action is in the best interest of the Government, as determined in accordance with this subchapter. Where the PCO has ascertained that (1) the contractor will accept a no-cost settlement, (2) Government property was not furnished, and (3) there are no outstanding payments, claims, or other contractor obligations, the PCO shall effect a no-cost settlement agreement in lieu of issuing a notice of termination. When a no-cost settlement cannot be obtained, a notice of termination should be issued; however, when the price of the undelivered balance of the contract is less than \$1,000, a termination for convenience should normally not be effected but the contract be permitted to run to com-

pletion. If a notice of termination has been issued, negotiation of the settlement with the contractor, including a no-cost settlement if appropriate, shall be the responsibility of the termination contracting officer (see §§ 8.206 and 8.210-4).

§ 8.202 Prior clearance of significant contract terminations.

(a) Prior Defense Department clearance is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of each Military Department through its liaison point designated in paragraph (d) of this section. In a labor surplus area a lesser number than 100 may be significant, and if so, should be similarly cleared.

(b) The following information will be submitted to the appropriate Departmental liaison point:

(1) Contract number, date, type of contract;

(2) Name of company;

(3) Nature of contract or end item;

(4) The reasons for the termination;

(5) Contract price of items terminated;

(6) Total number of contractor employees involved;

(7) Statement of anticipated impact on the company and the community (identify); identify area labor category, and whether contractor is large or small business;

(8) Total number of subcontractors involved as well as the impact in this area, if known; and

(9) Draft (unclassified) of suggested press release of information.

(c) Clearance will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The Departmental liaison points for prior clearance of significant termination are as follows:

Army—OSA (OSALL) ASA (I&L) (Copy).
Navy—Chief of Legislative Affairs (OLA-N).
Air Force—HQ USAF (AFSPP).
Defense Supply Agency—DSAH-PPO.

(e) Liaison offices of Military Departments will act promptly on the release and not later than 2 working days after receipt so as to avoid the accrual of termination costs.

§ 8.203 Notice of termination.

(a) General. Contracts shall be terminated for convenience, or for default in the case of cost-reimbursement type contracts, only by a written notice to the contractor (see § 8.801), stating:

(1) That the contract is being terminated for the convenience of the Government (or for default) pursuant to the contract provisions authorizing such termination;

(2) The effective date of termination;
 (3) The extent of termination and, if a partial termination, the portion of the contract to be continued;

(4) Recommended actions to be taken by the contractor to minimize the impact on his personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph 8 of the letter notice in § 8.801-2); and

(5) Any special instructions.

(b) *Distribution of copies.* Simultaneously with issuance of the termination notice to the contractor a copy shall be sent to the contract administration office and to any known assignee, guarantor, or surety of the contractor.

(c) *Amendment of termination notice.* A notice of termination may be amended to provide for:

(1) The correction of mistakes in the notice, of a nonsubstantive nature,

(2) Addition of supplemental data or instructions, and

(3) Rescission of the notice when it has been determined that the items of work terminated had been completed or shipped prior to the contractor's receipt of the notice.

(d) *Reinstatement of terminated contracts.* The purchasing office may reinstate the terminated portion of a contract in whole or in part by an amendment to the notice of termination provided that it has been determined in writing that:

(1) Circumstances clearly indicate a requirement for the terminated items; and

(2) Reinstatement is advantageous to the Government;

Provided, That, the written consent of the contractor is obtained to the reinstatement.

§ 8.204 Methods of settlement.

Settlement of terminated cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (a), negotiated agreement, (b) determination by the TCO, (c) in the case of cost-reimbursement type contracts, costing-out under vouchers using Standard Form 1034, or (d) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

§ 8.205 Duties of prime contractor after receipt of notice of termination.

The contractor, after receipt of the notice of termination and except as otherwise directed by the TCO, must comply with the termination clause of the contract and the notice of termination which generally require, among other things, that the contractor:

(a) Stop work immediately on the terminated portion of the contract and discontinue placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the TCO of any special circumstances precluding the stoppage of work;

(d) If the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in the cost thereof;

(e) Take such action as may be necessary, or as the TCO may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the TCO, deliver such property to the Government;

(f) Promptly notify the TCO in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle all outstanding liabilities and all claims arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;

(h) Promptly submit his own settlement proposal, supported by appropriate schedules; and

(i) Dispose of any termination inventory, as directed or authorized by the TCO.

§ 8.206 Duties of termination contracting officer after issuance of notice of termination.

(a) In accordance with the termination clause in the contract and with the notice of termination, the TCO shall, among other things:

(1) Direct the action required of the prime contractor including the execution of a no-cost settlement agreement (see § 8.210-4) if appropriate;

(2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(3) Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(4) To the extent that he is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination.

(b) To expedite settlement, the TCO shall seek assistance from specially qualified personnel (such as negotiating, legal, accounting, inspecting, engineering, and property disposal personnel) to:

(1) Assist the TCO in dealings with the contractor;

(2) Render advice on legal and contractual matters;

(3) Conduct accounting reviews and render advice and assistance on accounting matters; and

(4) Perform the following functions with respect to the termination inventory—

(i) Verify its existence;

(ii) Determine qualitative and quantitative allocability;

(iii) Make recommendations concerning serviceability and unserviceability;

(iv) Undertake necessary screening and redistribution; and

(v) Assist the contractor in accomplishing other disposition.

(c) An initial conference shall be held with the contractor as promptly as possible to develop a definite program for effecting the settlement. Where appropriate in the judgment of the TCO, principal subcontractors should be present. The TCO shall prepare and place in the termination case file, a memorandum on the results of the conference. Topics discussed at the conference should include:

(1) General principles relating to the settlement of any termination claim, including obligations of the contractor, under the termination clause of the contract;

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settlement of subcontractors' claims;

(5) Names of subcontractors involved and the respective dates termination notices were issued to them;

(6) Contractor personnel handling, and methods for, review and settlement of subcontractor claims;

(7) Arrangements for transfer of title and delivery to the Government of any materials required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractor's termination inventory, including the preparation of termination inventory schedules;

(9) Contractor accounting practices and preparation of DD Form 546 (Schedule of Accounting Information) (§ 8.802-9);

(10) Form in which settlement proposals shall be submitted;

(11) Accounting review of settlement proposals;

(12) Any requirement for interim financing in the nature of partial payments;

(13) Tentative time schedule for negotiation of the settlement, including submission of settlement proposals, termination inventory schedules, and accounting information schedules by the contractor and subcontractors; and

(14) Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph 8 of the letter notice in § 8.801-2).

§ 8.206-1 Termination status report.

Upon receipt of the termination notice, it is the responsibility of the contract administration office to prepare DD Form 1598, Contract Termination Status Report, and transmit two copies, in the

case of the Departments of the Army and Navy and the Defense Supply Agency to the purchasing office; and in the case of the Air Force, to the Air Force Contract Management Division, Air Force Unit Post Office, Los Angeles, Calif. 90045; and one copy to the headquarters office to which the contract administration office is directly responsible. In addition, these reports shall be furnished on a quarterly basis for the quarters ending March, June, September, and December within 30 days after the end of the respective quarter.

§ 8.206-2 Release of excess funds.

An estimate of funds required to settle the termination claim will be made by the TCO at the earliest practicable date. Funds obligated under the contract in excess of an estimated amount required for settlement will be released to the purchasing office within thirty (30) days after receipt of the termination notice by the TCO. Continuous surveillance of required funds will be maintained by the TCO to permit timely release of any additional excess funds. A recommended format for release of excess funds is in § 8.807. If it appears that the previous releases of excess funds have resulted in a shortage of the amount which will be required for settlement, the TCO will inform the purchasing office and request by letter the reinstatement of funds, which will be provided within thirty (30) days thereafter.

§ 8.206-3 Termination case file.

A separate termination case file shall be established and maintained for each individual termination by the TCO responsible for negotiating final settlement. Such file shall include records of all actions relative to the settlement. (See § 1.308 of this chapter.)

§ 8.207 Fraud or other criminal conduct.

Whenever the TCO has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts in accordance with § 1.111 of this chapter.

§ 8.208 Audit of prime contract settlement proposals and of subcontract settlements.

(a) Each settlement proposal of \$2,500 or over submitted by a prime contractor shall be referred by the TCO to the Defense Contract Audit Agency for appropriate examination and recommendation. The TCO may, when circumstances indicate the necessity therefor, refer settlement proposals of less than \$2,500 to such agency. The TCO's referral shall be in writing, indicate any specific information or data which the TCO desires to have developed, and include any facts or circumstances within the knowledge of the TCO which will assist the Defense Contract Audit Agency in the accomplishment of its function. The auditor shall develop such information and may make such further accounting review as he deems appropriate. The Defense Contract Audit Agency shall sub-

mit written comments and recommendations to the TCO. In claims of less than \$2,500 where a formal examination of the settlement proposal is not warranted, a desk review will be performed by the TCO or a qualified member of his staff. A written summary of the review will be incorporated in the termination case file.

(b) Subcontract settlements submitted by a contractor to the TCO for approval or ratification in accordance with § 8.209 shall be referred to the Defense Contract Audit Agency for review and recommendations if (1) the settlement involves \$25,000 or more unless an accounting review of the settlement proposal has been performed by the Defense Contract Audit Agency; or (2) the TCO considers an accounting review in whole or in part, desirable. The requirement for review under this paragraph does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review. The Defense Contract Audit Agency shall submit written comments and recommendations to the TCO.

(c) The responsibility of the contractor set forth in § 8.209-1 for settlement of immediate subcontractors' settlement proposals applies equally to prime contractors and subcontractors and includes responsibility for performing accounting reviews and any necessary field audits. However, in the situations outlined below, the Defense Contract Audit Agency generally should be requested to perform the accounting review of a subcontractor's settlement proposal where:

(1) A subcontractor objects to an accounting review of his records by an upper-tier contractor for competitive reasons;

(2) The Defense Contract Audit Agency is currently performing audit work at the subcontractor's plant, or where it can be performed more economically or efficiently;

(3) Audit by the Defense Contract Audit Agency is necessary for consistent audit treatment and orderly administration; or

(4) The contractor has a substantial or controlling financial interest in the subcontractor.

Duplication by the Defense Contract Audit Agency of accounting reviews performed by the upper-tier contractor on subcontractor settlement proposals will be avoided to the extent possible. However, when appropriate, the Government will make additional reviews. Where the contractor is performing accounting reviews in accordance with this section, the TCO should request the Defense Contract Audit Agency periodically to examine the contractor's accounting review procedures (including but not limited to audit programs, cost principles applied, working papers, and audit reports) and performance thereunder and make such comments and recommendations to the contracting officer as may be deemed appropriate.

(d) The audit report is an advisory document rendered to the TCO for his

use in negotiating a settlement or issuing a unilateral determination. Due care and prudence will be exercised by Government personnel in the handling of audit reports covering a contractor's or subcontractor's settlement proposals so as not to reveal privileged information or information that will jeopardize the negotiation position of the Government, prime contractor, or a higher tier subcontractor. Consistent with the foregoing and when considered in the Government's interest, accounting reviews under paragraph (c) of this section may be made available to prime and higher tier subcontractors for their use in settling subcontract claims.

§ 8.209 Settlement of subcontract claims.

§ 8.209-1 Subcontractor's rights.

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. The rights of a subcontractor are against the prime contractor or intermediate subcontractor with whom he has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the termination claims of immediate subcontractors.

§ 8.209-2 Prime contractor's rights and obligations.

Each termination clause provides that, after receipt of a notice of termination and except as otherwise directed by the TCO, the prime contractor shall terminate all subcontracts to the extent that they relate to the performance of any work terminated by notice of termination. Prime contractors should therefore, for their own protection, include a termination clause in their subcontracts. A suggested subcontract termination clause is set forth in § 8.706. The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise his rights thereunder, shall not (a) affect the right of the Government to require the termination of the subcontract, or (b) increase the obligation of the Government beyond that which would have arisen if the subcontract had contained an appropriate termination clause. In any such case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount which would be due under subparagraphs (i), (ii), and (iii) of paragraph (e) of the suggested subcontract termination clause. Reimbursement in excess of that amount shall be allowed only in unusual cases and then only when the TCO is satisfied that the terms of the subcontract were negotiated in good faith and did not unreasonably increase the rights of the subcontractor.

§ 8.209-3 Settlement procedure.

(a) Settlements with subcontractors shall be made in general conformity with the policies and principles relating to settlement of prime contracts as set forth in this subpart and subparts C or D of this part as applicable. However, the basis and form of the subcontractor's settlement proposal must be acceptable

to the prime contractor or the next higher tier subcontractor. Each such settlement shall be supported by accounting and other data sufficient for adequate review by the Government. In no event shall the Government pay to the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (§ 8.209-5).

(b) Except as provided in § 8.209-4, (1) all subcontract termination inventory shall be disposed of and accounted for in accordance with Part 24 of this chapter; and (2) the TCO shall require the prime contractor to submit to him for approval or ratification all termination settlements with subcontractors. In submitting each settlement, the prime contractor shall certify that he has examined the subcontractor's claims included therein, that they are allocable to the terminated portion of the prime contract, and that the settlement is fair and reasonable, was negotiated in good faith, and is not more favorable to the subcontractor than if the Government were not involved. The contractor shall also certify that he has received from all his immediate subcontractors certifications substantially in the form of his own certification. With respect to settlements with more remote subcontractors, the contractor shall certify that he has no information leading him to doubt their reasonableness or their allocability to the terminated portion of the prime contract.

(c) The TCO shall promptly examine such subcontract settlement required to be submitted to him (including the basis and form of the proposal upon which the settlement was based) to satisfy himself that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see § 8.000(c)), and that the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the TCO shall be guided generally by the provisions of this Section relating to the settlement of prime contracts, and shall comply with any applicable requirements of §§ 8.208 and 8.212 relating to accounting and other reviews. Upon completion of the examination, the TCO shall notify the contractor in writing of (1) his approval or ratification, or (2) his reasons for disapproval.

§ 8.209-4 Authorization for subcontract settlements without approval or ratification.

(a) (1) The TCO may, upon the written request of the prime contractor, authorize him in writing to conclude settlements of \$10,000 or less (see § 8.101-1) of his terminated subcontracts, without approval or ratification by the TCO, if:

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inven-

tory) of his immediate and lower tier subcontractors. (The TCO shall obtain the advice and recommendations of (a) the Defense Contract Audit Agency with respect to the adequacy of the contractor's audit administration, including personnel; and (b) the cognizant disposal office with respect to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters.);

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of in accordance with § 24.212 of this chapter, except that the disposition of such inventory shall not (a) be subject to review by the TCO under §§ 8.209-3(c) or 24.212-3 of this chapter, or (b) be subject to § 24.205; provided, however, no industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to § 24.205-3 of this chapter; and

(iii) The settlement will be accompanied by a certificate substantially similar to the certificate set forth in the settlement proposal form in § 8.802:

Provided, That the TCO shall not grant to the contractor any authority hereunder for settlements between \$2,500 and \$10,000 without the written approval as to that contractor of the Head of the Procuring Activity concerned, or his designee. Except as provided in subparagraph (3) of this paragraph, authority granted to a prime contractor pursuant to this subparagraph by any contracting officer within the Department of Defense shall be applicable to all prime contracts of all procuring activities within the Department of Defense which have been terminated or modified by change orders.

(2) Except as provided in subparagraph (3) of this paragraph, the TCO without further approval or ratification shall accept, as part of the prime contractor's termination claim, any settlement of terminated lower tier subcontracts concluded by any of his immediate or lower tier subcontractors who, pursuant to subparagraph (1) of this paragraph, have been granted, by any contracting officer within the Department of Defense, authority as prime contractors to settle subcontracts; provided that the settlement of such lower tier subcontracts is within the limit of such authority. Authorization to settle claims of lower tier subcontractors shall not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise such authority in his capacity as a subcontractor, with respect to his terminated subcontracts and orders. When exercising such authority as a subcontractor, notification thereof shall be furnished the purchaser.

(3) The provisions of subparagraphs (1) and (2) of this paragraph shall not apply to any contracts under the administration of any contracting officer within the Department of Defense if such contracting officer so notifies the prime contractor concerned. Such notice (i) shall be in writing, (ii) shall be issued only after written approval thereof by the

Head of the Procuring Activity concerned or his designee, and (iii) if subparagraph (2) of this paragraph is involved shall specify any subcontractor affected.

(b) Section 24.212 of this chapter shall apply to any disposal of completed end items allocable to the terminated subcontract, except that completed end items allocable to the terminated subcontract may be disposed of without review by the TCO under §§ 8.209-3 or 24.212-3, and without screening under § 24.205 of this chapter, if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this section.

(c) A TCO granting the above authorization to a contractor shall be responsible for periodically (at least annually) making a selective review of settlements and settlement procedures to determine whether the contractor is making adequate reviews and fair settlements, and whether such authorization shall remain in effect. In connection with these periodic reviews, the TCO shall obtain the advice and recommendations of the Defense Contract Audit Agency with respect to the auditing aspects of the contractor's review procedures and those of the disposal office with respect to property disposal aspects of the contractor's review procedures. Whenever the TCO determines that the contractor's procedures are not adequate or that improper settlements are being made, he shall revoke the authorization by written notice to the contractor. The revocation shall take effect only from the date of receipt.

(d) Any number of separate settlements may be made with a single subcontractor. However, claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible, and shall not be divided in order to bring them within an authorization.

(e) Upon written request of the contractor and with the prior written approval of the Head of the Procuring Activity or his designee, an authorization granted under paragraph (a) (1) of this section, may be increased to authorize the contractor to conclude settlements of more than \$10,000 but not more than \$25,000 under a particular prime contract. Such authorization in excess of \$10,000 may be limited to specific subcontracts or classes of subcontracts. However, industrial plant equipment, the cost of which is included in determining the amount of the claim, shall not be disposed of prior to screening pursuant to § 24.205-3 of this chapter.

(f) Authorizations granted under this section shall not authorize the settlement of requisitions or orders placed with any division or unit within the contractor's corporate entity.

(g) A recommended format of the Contractor's Application for the Grant of an Authorization is in § 8.210 and the TCO's Letter of Authorization to the contractor is contained in § 8.810-1.

§ 8.209-5 Recognition of judgments and arbitration awards.

(a) In the event a subcontractor obtains a final judgment against a prime contractor, the TCO shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the subcontractor, to the extent such judgment is properly allocable to the terminated portion of the prime contract if:

(1) The prime contractor has made reasonable efforts to include in his subcontract the termination clause in § 8.706 or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination, in whole or in part, are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor has made reasonable efforts to settle the claim of the subcontractor;

(4) The contractor has given prompt notice to the TCO of the initiation of the proceedings in which the judgment was rendered and has not refused to give the Government control of the defense of the proceedings; and

(5) The contractor has diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, has rendered such reasonable assistance as has been requested by the Government.

If the foregoing conditions are not all met, the TCO may allow the contractor such part of the judgment as he considers a fair amount for settling the termination claim under the subcontract, giving due regard to the policies set forth in this part for settlement of such claims.

(b) Where a contractor and his subcontractor submit a subcontractor termination claim to arbitration under any applicable law or contract provision, the TCO shall recognize the amount of the arbitration award as the cost of settling the claim of the subcontractor to the same extent and under the same conditions as specified in paragraph (a) of this section.

§ 8.209-6 Delay in settlement of subcontractor claims.

Where a prime contractor is unable to settle with a subcontractor and such inability is delaying the settlement of the prime contract, the TCO may settle with the prime contractor, excepting from the settlement the whole or any part of the claim of such subcontractor and reserving the rights of the Government and of the prime contractor with respect thereto.

§ 8.209-7 Government assistance in settlement of subcontracts.

In unusual cases the TCO may determine that it is in the best interest of the Government to offer assistance to the prime contractor in the settlement of a particular subcontract. Such a situation may exist when the prime contractor has

made all reasonable efforts to negotiate the settlement without success and the TCO believes that with the assistance of the Government a settlement can be reached. Such assistance shall be furnished only with the consent of the prime contractor. In such cases, an agreement may be entered into by the Government, the prime contractor, and a subcontractor, covering the settlement of one or more subcontracts. In any such case, payment to the subcontractor shall be effected through the prime contractor as part of the overall settlement with the latter.

§ 8.209-8 Assignment of rights under subcontracts.

(a) The termination clauses set forth in Subpart G of this part obligate the prime contractor to assign to the Government, in the manner, at the time, and to the extent directed by the TCO, all his right, title, and interest under any subcontracts terminated by reason of termination of the prime contract. The TCO shall not require such assignment unless he determines that it is in the best interest of the Government.

(b) In giving the Government the right to require the assignment of the prime contractor's interest in terminated subcontracts, the termination clauses set forth in Subpart G of this part also provide that the Government shall have the right, in its discretion, to settle and pay any or all claims arising out of the termination of such subcontracts. This right does not obligate the Government to settle and pay termination claims of subcontractors. As a general rule, the prime contractor is obligated to settle and pay such claims. (Direct settlements with subcontractors are not encouraged.) Where, however, the TCO determines that it is in the best interest of the Government to settle and pay directly a subcontractor's termination claim, he shall first obtain approval from the Head of the Procuring Activity or his designee, setting forth in the request the pertinent facts and the reason for recommending direct settlement. Upon receipt of the required approval, the TCO shall, after notifying the contractor, proceed to settle the subcontractor's termination claim in accordance with termination procedures applicable to the settlement of prime contracts. An example of a situation in which the best interest of the Government would be served by effecting a direct settlement would be where a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's claim will jeopardize the financial position of the subcontractor.

§ 8.210 Settlement agreements.

§ 8.210-1 General.

When a settlement has been negotiated with respect to the terminated portion of a contract, and all required reviews have been obtained, the contractor and the TCO shall enter into a

settlement agreement on Standard Form 30 (Amendment of Solicitation/Modification of Contract), substantially in the form set forth in the appropriate subparagraph of § 8.805. The settlement shall cover (a) any setoffs and counterclaims which the Government may have against the contractor and which may be applied against the terminated contract, and (b) all claims of subcontractors, except claims which are specifically excepted from the agreement and reserved for separate settlement.

§ 8.210-2 Reserved items.

Where any rights or claims of the Government or of the contractor other than standard reservations contained in settlement forms in §§ 8.805-1 through 8.805-8 are to be reserved from the settlement agreement, the agreement shall clearly and specifically describe the nature and extent of the reserved items. However, care shall be taken so that the wording of the reservation does not create any new rights in the parties beyond those in existence prior to the execution of the settlement agreement. The settlement agreement shall be clearly marked "This settlement agreement contains a reservation" and the contract file shall be retained until such reservation is removed. The TCO will assure that sufficient funds are reserved to cover complete settlement of the reserved items. The amount to be reserved will be determined by the TCO based on the best evidence available to him at the time of settlement. The separate settlement of reserved items shall be in accordance with the provisions of this part and shall be set forth in settlement agreements. A recommended format for Settlement of Reservations appears in § 8.805-9.

§ 8.210-3 Government property.

Before any settlement agreement is executed, the TCO shall determine the status of the Government property account for the terminated contract. If the audit of such property required by item 404, § 30.2, or item 215, § 30.3 of this chapter discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property, or make an appropriate deduction from the amount otherwise due the contractor.

§ 8.210-4 No-cost settlement.

(a) If no costs have been incurred by the contractor with respect to the terminated portion of the contract or if the contractor is willing to waive the costs incurred by him and if no amounts are due to the Government under the contract, a no-cost settlement agreement shall be executed substantially in the form set forth in §§ 8.805-6 or 8.805-7, as applicable.

(b) Under a terminated cost-reimbursement type contract, the settlement agreement shall cover only the fee, if any, when the contractor has vouchered out all costs within the period specified in § 8.402.

§ 8.210-5 Partial settlements.

Every effort should be made by the TCO to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, TCO's shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a TCO cannot promptly effect a complete settlement under the terminated contract, a partial settlement may be entered into; provided (a) the issues on which agreement has been reached are clearly severable from other issues, and (b) the partial settlement will not prejudice the interest of the Government or the contractor in disposing of the unsettled part of the claim.

§ 8.210-6 Joint settlement of two or more claims.

With the consent of the contractor, the contracting officer or officers concerned may negotiate jointly two or more termination claims of the same contractor under different contracts, even though such contracts are with different Military Departments. In such cases, accounting work shall be consolidated to the greatest extent practical. The settlement resulting from such joint negotiation may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved. Where the settlement agreement covers more than one contract, it shall (a) clearly identify the contracts involved; (b) apportion the total amount of the settlement among the several contracts on some reasonable basis; (c) have attached or incorporated therein a schedule showing the apportionment; and (d) be distributed and attached to each contract involved in the same manner as other contract amendments.

§ 8.210-7 Settlement by determination.

(a) *General.* To the extent that the contractor and TCO are unable to agree upon the settlement of a terminated contract or if a termination claim is not submitted within the period required by the termination clause in the contract, the TCO shall issue a determination of the amount due in accordance with the termination clause in the contract, including any cost principles incorporated therein by reference. An adjustment for loss, if any, should be made in accordance with § 8.304. The TCO shall comply with provisions of §§ 8.210-1 through 8.210-6 and 8.212-2 in making any such determination. Copies of determinations shall be accorded the same distribution as modifications to a contract.

(b) *Notice to the contractor.* The TCO shall give the contractor not less than 15 days' notice by certified mail (return receipt requested) to submit, on or before a stated date, written evidence substantiating the amount claimed to be due.

(c) *Submission of evidence.* (1) The contractor has the burden of estab-

lishing by proof satisfactory to the TCO the amount claimed.

(2) The contractor may submit such vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as he may wish. The TCO may request the contractor to submit such additional documents and data, and may cause such accounting, investigations, and audits to be made, as he deems appropriate.

(3) The TCO may accept photostatic or other copies of documents and records, and shall not require original documents, unless there is a question of authenticity.

(4) If the contractor wishes to confer with the TCO, or if the TCO wishes additional information from Government personnel or from independent experts, or wishes to consult persons whose affidavits or reports have been submitted, the TCO, in his discretion, may hold such conferences as he deems appropriate.

(d) *Determinations.* After reviewing the information submitted or otherwise available to him, the TCO shall determine the amount due and shall transmit a copy of his determination to the contractor by certified mail (return receipt requested). The letter of transmittal shall advise the contractor that the determination is a final decision from which an appeal may be taken under the disputes clause. The determination shall set forth the amount due the contractor and shall be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in § 8.802 and set forth in F-200.540, F-200.541, and F-200.831 and by additional information, schedules, and analyses, as appropriate. An adequate explanation shall be given for each major item of disallowance. The TCO need not reconsider (1) any settlement with a subcontractor, (2) any disposition of property, or (3) any other action relating to the terminated portion of the contract, where such settlement, disposition, or other action has been previously ratified or approved by him or another duly authorized contracting officer.

(e) *Preservation of evidence.* The TCO shall retain in appropriate files all written evidence and other data or copies thereof, relied upon by him in making his determination, except that copies of original books of account, need not be made. Books of account together with other original papers and documents, shall be returned to the contractor within a reasonable time.

(f) *Appeals.* The contractor has a right of appeal, under the Disputes clause of the contract, from any settlement by determination, except that the contractor has no such right of appeal where he has failed to submit his settlement proposal within the time provided in the contract and has failed to request extension of such time. The pendency of an appeal shall not affect the authority of the TCO to settle the termination claim or any part thereof by a negotiated agreement with the contractor at any time before the appeal is decided.

(g) *Decision of the Armed Services Board of Contract Appeals.* A decision of the Armed Services Board of Contract Appeals will be given effect, when necessary, by a supplement to the contract. Where appropriate, a release should be obtained from the contractor. TCOs are authorized to modify forms of Settlement Agreement in § 8.805 to accord with this provision.

§ 8.211 Contracting officer's negotiation memorandum.

The TCO shall, at the conclusion of the settlement negotiations, prepare a memorandum setting forth the principal elements of the settlement for inclusion in the termination case file and for the use of reviewing authorities. If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors considered with respect to each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually, but the total amount of the recommended settlement shall be supported in reasonable detail. The memorandum shall include explanations of matters as to which differences and doubtful questions were settled by agreement, and the factors taken into consideration in connection therewith, and any other matters which, in the opinion of the TCO, will assist reviewing authorities in understanding the basis for the settlement. Recommended memorandum formats for settlements requiring review board action appear in §§ 8.808 and 8.809.

§ 8.212 Review and approval of proposed settlements.**§ 8.212-1 Settlement review boards.**

The head of each procuring activity shall establish Settlement Review Boards to review proposed settlements as required by § 8.212-2(a). Such boards shall be established in the office of the Head of the Procuring Activity and may also be established in field or regional procurement offices, as appropriate. Each Settlement Review Board should be composed of at least three qualified officers or civilian employees of the Department concerned, who shall be persons with broad business and contracting experience. The membership of each Board should include a lawyer, and, in appropriate cases an accountant, an engineer or industrial specialist. Three members of the Board shall constitute a quorum; the Board may act by a majority of the members present. No person shall serve as a member of a Settlement Review Board in reviewing a settlement in which he has participated. The Department negotiating and settling the terminated contract shall accomplish any required Review Board action.

§ 8.212-2 Required review and approval.

(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the TCO shall submit each

such settlement or determination for review and approval by a Settlement Review Board if:

(1) The settlement or determination involves \$50,000 or more (see § 8.101-1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract, or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is \$50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is \$50,000 or more;

(3) The Head of the Procuring Activity concerned determines that a review is desirable; or

(4) The TCO, in his discretion, desires review by the Settlement Review Board.

The review and approval of each settlement or determination in excess of \$1,000,000 shall be by a Board at the Head of the Procuring Activity level.

(b) *Submission of information.* The TCO shall submit to the Settlement Review Board a statement of the settlement, supported by such detailed information as is required for an adequate review. This information should normally include copies of (1) the contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, (4) the TCO's memorandum explaining the settlement (see § 8.211), and (5) when appropriate, the opinion of any other Settlement Review Board which has previously reviewed the settlement. The Board, may in its discretion, require the submission of additional information.

§ 8.212-3 Scope of review.

The function of a Settlement Review Board is to determine the overall reasonableness of the proposed settlement agreement or determination from the standpoint of protecting the Government's interest. The Board may vary the scope and intensity of the review according to the size and complexity of the proposed settlement agreement or determination and any other relevant factors. It is not intended that the Board examine in detail every element entering into the proposed settlement agreement or determination, but the Board may inquire into selected elements of the proposed settlement agreement or determination to assure that it has been conducted competently and is based on adequate information.

§ 8.212-4 Action by board.

The Settlement Review Board shall submit to the TCO a written opinion with respect to the proposed settlement agreement or determination and any other matter considered by the Board setting forth its approval or disapproval thereof, or other decision thereon. Failure of the Board to submit a written opinion as to any proposed settlement agreement or determination within 30 days after submission to the Board of all the information required pursuant to § 8.212-2(b) shall operate as an approval by the Board.

§ 8.212-5 Subcontracts.

A TCO may authorize the contract administration office cognizant of an upper-tier subcontractor to grant approval or ratification, including necessary settlement review board approvals, of proposed subcontractor settlements described in § 8.209-3(c), which are first reviewed and referred by the prime contractor to the TCO. This procedure may be used only for specific contracts and is not applicable to settlements between the contractor and his immediate subcontractors.

§ 8.213 Payment.

§ 8.213-1 Partial payments upon termination.

(a) *General.* If the contract authorized partial payments on termination claims prior to settlement, a fixed-price prime contractor, or a cost-reimbursement prime contractor whose settlement proposal includes costs, may request such partial payments in the form set forth in § 8.802-10 at any time after submission of interim or final settlement proposals. Applications for partial payments shall be processed promptly. A subcontractor's partial payment application shall be submitted through the prime contractor and the prime contractor shall attach his own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor shall be made only the prime contractor.

(b) *Amount of partial payment.* Before approving any partial payment requested by the contractor, the TCO shall have made such accounting, engineering, or other specialized reviews as he deems proper of the data required by this part to be submitted in support of the contractor's settlement proposals. If such reviews and the TCO's examination of the data indicate that the requested partial payment is proper, the TCO may, in his discretion, authorize payments as follows:

(1) An amount up to 100 percent of the contract price, adjusted in accordance with § 8.306 for undelivered acceptable items completed prior to the termination date, or completed thereafter with the approval of the TCO, which are included in the contractor's settlement proposals pursuant to § 8.306;

(2) An amount up to 100 percent of the amount of any subcontract settlement effected and paid by the prime contractor; provided the settlement has been approved or ratified by the TCO pursuant to § 8.209-3(c) or has been authorized pursuant to § 8.209-4;

(3) An amount up to 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) A reasonable amount, not to exceed 90 percent, of other allowable costs (including manufacturing and administrative overhead) allocable to the terminated portion of the contract and not included in subparagraphs (1), (2), or (3) of this paragraph; and

(5) An amount up to 100 percent of partial payments made to subcontractors in conformance with this paragraph.

No partial payments shall be made on account of profit or fee which may be claimed with respect to the terminated portion of the contract. In exercising his discretion as to the extent to which partial payments shall be made, the TCO shall consider the diligence of the contractor in settling with his subcontractors and in preparing his own claim.

(c) *Recognition of assignments.* Where an assignment of claims has been made under the contract, partial payments shall not be made to other than the assignee unless the parties to the assignment consent to the payments. Where moneys payable under the contract have been assigned, applications of subcontractors for partial payment shall not be approved for payment unless a written statement has been secured by the contractor from the assignee, agreeing to and authorizing the payment of funds in the manner prescribed by Section V of the Application (DD Form 548).

(d) *Security for partial payments.* To the extent that any partial payment is made with respect to completed end items or for direct or indirect costs of termination inventory, the interest of the Government shall be protected by transfer of title to the Government of the completed end items or termination inventory concerned, or by the creation of a lien in favor of the Government, paramount to all other liens, on such completed end items or termination inventory, or by other appropriate means.

(e) *Deductions in computing amount of partial payments.* There shall be deducted from the gross amount of any partial payment otherwise payable under § 8.213-1(b):

(1) All unliquidated balances of progress payments and advance payments (including interest thereon) theretofore made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property the costs of which are included in the application for partial payment.

(f) *Limitation on total amount; effect of overpayment.* The total amount of all partial payments shall not exceed the amount which will, in the opinion of the TCO, become due to the contractor by reason of the termination. If the total of partial payments made to the contractor should exceed the amount finally determined to be due to the contractor on his termination claim, the excess shall be repayable to the Government on demand, together with interest computed at the rate of 6 percent per annum from the date such excess payment was received by the contractor to the date of repayment: *Provided*, That (1) no interest shall be charged for any such excess payment attributable to a reduction in the contract termination claim by reason of retention or other disposition of termination inventory, until 10 days after the date of such retention or disposition, or such later date as determined by the TCO by reason of the circumstances, and (2) no interest shall be charged for overpayment under cost-reimbursement type research and

development contracts (without profit or fee to the contractor) if the overpayments are repaid to the Government within 30 days after demand.

(g) *Certification and approval of partial payments.* Partial payments in a specific amount shall be made on the basis of vouchers or invoices certified by the contractor. The certification shall include, in addition to any other provisions ordinarily required to be included in such certificate, the following:

The payment covered by this voucher is a partial payment on account of the Contractor's termination claim under contract No. _____, made pursuant to section VIII of the Armed Services Procurement Regulation.

The invoice or voucher, if proper, shall be approved by the TCO by noting thereon the following.

Payment in the amount of \$_____ approved.

§ 8.213-2 Final payment.

(a) *Negotiated settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by determination.* In the event of a settlement by determination:

(1) If the contractor has not appealed the determination a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment; or

(2) If the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to subparagraph (1) of this paragraph may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination.

§ 8.214 Cost principles applicable to the settlement of research and development contracts with educational institutions.

The cost principles and procedures set forth in Subpart C, Part 15 of this chapter, shall, subject to the general policies set forth in § 8.301, be a guide for the negotiation of settlements under fixed price or cost-reimbursement type contracts for experimental, developmental or research work with educational institutions, in accordance with § 15.103 of this chapter and Subpart F, Part 15 of this chapter.

§ 8.215 Settlement of unadjusted contract changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

(b) When the contract has been partially terminated, any outstanding unadjusted contract changes will be handled by the purchasing office. However, delegation may be made by the PCO to the TCO.

§ 8.216 Terminated contracts with Canadian Commercial Corp.

(a) The termination and settlement of contracts with the Canadian Commercial Corp. shall be effected in accordance with the provisions of (1) the Letter of Agreement between the Department of Defence Production (Canada) and the U.S. Department of Defense (§ 6.506 of this chapter); (2) policies set forth Subpart E, Part 6 of this chapter and this part; and (3) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corp. shall be submitted in the form prescribed in § 8.802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (1) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (2) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of §§ 8.209 and 8.805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corp. pursuant to § 6.504-3 of this chapter. The Authority of the Canadian Commercial Corp. to settle Canadian subcontracts without approval or ratification of the TCO is without limitation as to dollar amount. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corp. to the TCO for screening in accordance with the provisions of § 24.205 of this chapter. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corp. for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corp. to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO.

(d) Termination claims submitted by U.S. subcontractors and suppliers normally should be referred by the Canadian Commercial Corp. to the contract

administration office cognizant of the subcontractor for settlement in accordance with this part and Part 24 of this chapter. Upon completion of all settlement action, including settlement review board approval if required, the TCO shall advise the Canadian Commercial Corp., of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to paragraph (b) of this section. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corp.

§ 8.217 Settlement of terminated contracts with incentive provisions.

(a) *FPI contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (h) of the clause in §§ 7.108-1 and 8.601 of this chapter.

(1) *Partial termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (h) of the clause in § 7.108-1 of this chapter and paragraph (j) of the clause in § 7.108-2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbursement may be claimed in the settlement proposal, shall be accomplished by the procuring contracting officer (PCO). Reimbursement for completed articles included in the settlement proposal for which a final price has not been established shall be at target price. An appropriate reservation as to final price with respect to such completed articles shall be incorporated in the supplemental agreement.

(2) *Complete termination.* If any items were delivered and accepted by the Government, prices shall be established by the PCO under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see § 8.601) shall govern and the provisions of the incentive clause shall not be applicable. The TCO responsible for the termination settlement will assure himself, on the basis of evidence he deems proper (including coordination with the PCO), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) *CPIF contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of § 8.702.

(1) *Partial termination.* Under a partial termination of a CPIF contract, settlement by the TCO shall be limited to an adjustment of target fee as provided in paragraph (h) of the clause in § 7.203-4 of this chapter. The supplemental agreement shall include a reservation with respect to any adjustment of target cost resulting from the partial termination. Adjustment of target cost, if required, shall be accomplished by the PCO.

(2) *Complete termination.* The settlement will be negotiated in accordance with the provisions of Subpart D of this part and § 8.702. The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Type Contracts

§ 8.301 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including an allowance for profit thereon which is reasonable under the circumstances. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The application of standards of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled, by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of record keeping, reporting and accounting in connection with the settlement of termination claims shall be kept to the minimum compatible with the reasonable protection of the public interest.

§ 8.302 Cost principles.

The principles set forth in the applicable subpart of Part 15 of this chapter shall be used as a guide for the evaluation of cost information in the negotiation of a termination settlement.

§ 8.303 Allowance for profit.

(a) *General.* Profit shall be allowed only on preparations made and work done by the contractor for the terminated portion of the contract but may not be allowed on the contractor's settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see § 8.209-5). Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

(b) *Factors to be considered.* In negotiating profit, factors to be considered include:

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract; engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered;

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to—

(i) Attainment of quantity and quality production,

(ii) Reduction of costs, and

(iii) Economy in the use of materials, facilities, and manpower;

(4) Amount and source of capital employed and extent of risk assumed;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit which the contractor would have earned had the contract been completed;

(8) Character, extent, and difficulty of subcontracting, including selection, placement, and management of subcontracts, settlement of terminated subcontracts, and engineering, technical assistance, and other services rendered but the profit shall not be measured by the amount of the contractor's payments to subcontractors for settlement of their termination claims; and

(9) The rate of profit both parties contemplated at the time the contract was negotiated.

§ 8.304 Adjustment for loss.

(a) In the negotiation or determination of any settlement, no profit shall be allowed if it appears that the contractor would have incurred a loss had the entire contract been completed. The amount of loss shall be negotiated or determined and an adjustment in the amount of settlement shall be made as specified in paragraph (b) or (c) of this section. In estimating the cost to complete, consideration shall be given to expected production efficiencies and to other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses;

(2) The contract price, as adjusted, for acceptable completed end items (see § 8.306); and

(3) The remainder of the settlement amount otherwise agreed or determined (not excluding the allocable portion of initial costs (see § 15.205-42(c) of this chapter)), reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) the total cost incurred prior to termination plus the estimated cost to complete the entire contract;

less all disposal credits and all unliquidated advance and progress payments previously made to the contractor under the contract.

(c) If the settlement is on a total cost basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses; and

(2) The remainder of the total settlement amount otherwise agreed or determined, reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) that remainder plus the estimated cost to complete the entire contract;

less all disposal and other credits, all advance and progress payments, and all other amounts previously paid to the contractor under the contract.

§ 8.305 Deductions.

From the amount payable to the contractor under a settlement, there shall be deducted (a) the agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds of sale of any materials sold by him, which have not otherwise been paid or credited to the Government; (b) the fair value, as determined by the TCO, of any part of the termination inventory which, prior to transfer of title to the Government or to a buyer pursuant to Part 24 of this chapter, is destroyed, lost, stolen, or so damaged as to become undeliverable, except for normal spoilage or to the extent the Government has expressly assumed the risk of loss; and (c) such other amounts as appropriate in the particular case.

§ 8.306 Completed end items.

Promptly after the effective date of termination, the TCO shall have all undelivered completed end items inspected and accepted if they comply with the prime contract requirements, and shall determine which accepted end items shall be delivered under the contract. The contractor shall be paid for completed end items so accepted and delivered by invoicing them at the contract price in the usual manner and shall not include such end items in his termination claim. Where completed end items, though accepted, are not to be delivered under the contract, the contractor shall include such end items in his settlement proposal at the contract price, appropriately adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

§ 8.307 Settlement proposals.

§ 8.307-1 Submission of settlement proposals.

(a) Subject to the provisions of the termination clause in the contract, the contractor should promptly submit to the TCO a settlement proposal setting forth the amount claimed to be due by reason of the termination. The proposal must be submitted within one year from the effective date of the termination, unless the period has been extended in accordance with the terms of the contract. Termination charges under a single prime contract involving two or more divisions or units of the prime contractor must be consolidated and included in a single termination claim.

(b) The settlement proposal must cover all elements of the contractor's claim, including settlements with subcontractors. With the consent of the TCO, proposals may be filed in successive steps covering separate portions of a claim. Such interim proposals shall include all costs of a particular type, except as the TCO may authorize otherwise.

(c) Settlement proposals must be in the form prescribed in § 8.802 and set forth in F-200.540, F-200.541, and F-200.831. When none of those forms is adequate for a particular contract, the Head of the Procuring Activity concerned may authorize appropriate modifications. Settlement proposals must be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs, may be used in preparing settlement proposals; provided, that such costs are determined in accordance with generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the TCO. A contractor shall not be required to maintain unduly elaborate cost accounting systems merely because his contracts may subsequently be terminated.

(d) DD Form 831 (see § 8.802-3 and F-200.831) may be used when the total claim is less than \$2,500, unless otherwise instructed by the TCO. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated wherever possible and must not be divided in such a way as to bring them below \$2,500.

(e) The Schedule of Accounting Information, DD Form 546, must be submitted for each termination under a contract on which a claim for reimbursement of costs is made, except that the Schedule is not required when the Short Form Settlement Proposal, DD Form 831, is used. Although several interim proposals may be submitted, DD Form 546 need be submitted only once unless, subsequent to filing of the original form, major changes occur in the information contained therein.

§ 8.307-2 Bases for settlement proposals.

(a) *Inventory basis.* Use of the inventory basis for settlement proposals is preferred. Under this basis the contractor may claim only costs chargeable or allocable to the terminated portion of the contract, and the settlement proposal must itemize separately:

(1) At purchase or manufacturing cost, each of the following metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling;

(2) Charges such as engineering costs, initial costs, and general administrative costs.

(3) Costs of settlements with subcontractors;

- (4) Settlement expenses; and
(5) Other proper charges.

An allowance for profit (see § 8.303) or adjustment for loss (see § 8.304(b)) must be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, must then be deducted.

(b) *Total cost basis.* (1) When use of the inventory basis is not practicable or will unduly delay settlement, the total cost basis may be used if approved in advance by the TCO. The following are examples of situations where use of the total cost basis may be permitted by the TCO:

(i) If production has not commenced and the accumulated costs represent planning and preproduction or "get ready" expenses;

(ii) If the contractor's accounting system will not readily lend itself to the establishment of unit costs for work in process and finished products;

(iii) If the contract does not specify unit prices; or

(iv) If the termination is complete and involves a letter contract.

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination must be itemized and the costs of settlements with subcontractors and applicable settlement expenses must be added. An allowance for profit (see § 8.303) or adjustment for loss (see § 8.304(c)) must be made. The contract price for all end items which have been or are to be delivered and accepted must be deducted. All unliquidated advance and progress payments, disposal and other credits known when the proposal is submitted, must also be deducted.

(3) When the total cost basis is used under a partial termination, the settlement proposal must not be submitted until completion of the continued portion of the contract. The settlement proposal must be prepared in accordance with subparagraph (2) of this paragraph except that all costs incurred to the date of completion of the continued portion of the contract must be included.

(c) *Other basis.* Termination claims may not be submitted on any basis other than paragraph (a) or (b) of this section without the prior approval of the Secretary concerned or his duly designated representative.

§ 8.308 Limitation on settlements.

The total amount payable to the contractor on account of a settlement, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

§ 8.309 Equitable adjustment in unit prices under fixed-price contracts in cases of partial termination.

(a) If, as a result of a partial termination, the contractor submits in writing a request according to the termination clause for an equitable adjustment of the

price or prices specified in the contract which are related to the continued portion, the request must be sent to the purchasing office.

(b) The procuring contracting officer (PCO) shall have final responsibility for negotiating an equitable adjustment in the price relating to the continued portion of the contract and will effect a supplemental agreement covering any changes in price. The PCO shall assure himself on the basis of evidence he deems proper (including coordination with the TCO), that no portion of any increase in price has been included in any termination settlement previously made or currently in process.

(c) The TCO responsible for the termination settlement shall assure himself, on the basis of evidence he deems proper (including coordination with the purchasing office), that no portion of the costs included in the equitable adjustment for the continued portion of the contract are included in the termination settlement.

Subpart D—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

§ 8.401 General considerations.

The termination clauses for cost-reimbursement type contracts (see §§ 8.702 and 8.704) provide for the settlement of costs and of fee, if any. The provisions of the particular contract governing costs shall determine what costs are allowable.

§ 8.402 Discontinuance of vouchers.

(a) When the contract has been completely terminated, the contractor shall not use Standard Form 1034 (Public Voucher) after the last day of the sixth month following the month in which the termination notice is effective; however, he may elect to discontinue the use of such vouchers at any time prior thereto. When the contractor has vouchered out all costs within the 6-month period, his claim for fee, if any, may be submitted on DD Form 547 (see § 8.803 and F-200.547) or by letter appropriately certified. The contractor must substantiate the amount of the fee he claims. The claim for fee must be submitted to the contracting officer within 1 year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. When the use of vouchers has been discontinued, all unvouchered costs and claim for fee, if any, shall thereafter be submitted in accordance with § 8.404.

(b) When the contract has been partially terminated, the provisions of § 8.405 shall be applied.

§ 8.403 Notice to the General Accounting Office.

The TCO shall promptly send a copy of the notice of termination to the regional office of the General Accounting Office serving the geographical area in which work under the terminated contract was performed. In addition, he shall advise that office of the date on

which the 6-month vouchering period will expire, or of the contractor's election to discontinue the use of Standard Form 1034 prior to the expiration of the 6-month period. If the regional office of the General Accounting Office notifies the TCO that an audit of payments under the contract will not be made or that no objection is interposed to effecting final settlement, no action will be taken under §§ 8.404-5, 8.404-6, or 8.404-7, and the TCO shall proceed with completion of the settlement in accordance with § 8.404-8.

§ 8.404 Procedure after vouchers are discontinued.

§ 8.404-1 Submission of settlement proposal.

The contractor shall submit a settlement proposal covering his costs and his claim for a fee, if any. Such proposal shall be submitted to the TCO within 1 year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract and in the form prescribed in § 8.803 and set forth in F-200.547, unless the Head of the Procuring Activity concerned authorizes modification thereof. The proposal shall contain only unvouchered costs and the contractor may not include in such proposal costs which:

- (a) Have been finally disallowed by the contracting officer or the General Accounting Office; or
- (b) Are the subject of a reclaim voucher or any costs of a similar nature.

§ 8.404-2 Interim negotiations.

The TCO and the contractor shall proceed immediately to take all action required by the termination clause of the contract and by this part (including negotiation of settlements with fixed-price subcontractors), but no final settlement agreement shall be executed until there has been full compliance with §§ 8.404-5 through 8.404-7.

§ 8.404-3 Partial payments.

Requests for partial payments shall be made and processed in accordance with § 8.213-1.

§ 8.404-4 Adjustment of overhead costs.

(a) If the contract contains a negotiated overhead rate clause (see § 3.704 of this chapter) and it appears that adjustment of overhead costs applicable to vouchered costs under the procedure established for determining such negotiated overhead rates will unduly delay final settlement, the TCO after obtaining appropriate information from the cognizant auditor may agree with the contractor:

- (1) To negotiate the amount of overhead for the contract for the period for which fixed overhead rates have not previously been negotiated, based upon audit recommendations requested by the TCO for such purpose or utilize provisional rates for this period to expeditiously effect final settlement if the provisional rate appears reasonable (see § 3.705(d) of this chapter); or
- (2) That any overhead adjustment shall be reserved in the final settlement

agreement, pending establishment of negotiated rates in accordance with subpart G, Part 3 of this chapter.

(b) When an amount of overhead is negotiated pursuant to paragraph (a) (1) of this section, the contractor will eliminate such overhead and the related direct costs on which it was based from the total pool and base used to compute overhead for other contracts performed during the applicable accounting period.

§ 8.404-5 Information concerning previous cost vouchers.

(a) The TCO shall obtain from the auditor the number of the last Standard Form 1034 cost voucher submitted for payment and furnish this information to the appropriate disbursing officer.

(b) Within 10 days from the date of payment of the last Standard Form 1034 voucher or from the date of receipt of the notice referred to in paragraph (a) of this section, whichever is later, the disbursing officer shall prepare and transmit to the TCO a list of all Standard Form 1034 vouchers paid under the contract showing (1) disbursing officer voucher number; (2) amount of voucher; (3) date of payment; (4) disbursing officer's name, symbol, and address; and (5) total amount of vouchers paid. The TCO shall verify the number and amounts of the vouchers listed against the records of the audit activity and if any discrepancies exist, shall request the disbursing officer to reconcile them. After reconciliation, the verified list shall be returned to the disbursing officer.

§ 8.404-6 Notice to General Accounting Office of audit status date.

Upon receipt of the verified list of vouchers, the disbursing officer shall immediately transmit a Notice of Audit Status Date (DD Form 547s), set forth in F-200.547s, by certified mail (return receipt requested) to the Regional Office of the General Accounting Office in which the work on the terminated contract was being performed. Such notice fixes as the "Audit Status Date" (a) the day 60 days from the date of the receipt of the notice by the General Accounting Office, or (b) the date of the receipt by the audit activity of the General Accounting Office audit status letter, whichever is earlier. The disbursing officer shall send a copy of the notice to the TCO and shall state when the notice was received by the General Accounting Office.

§ 8.404-7 Exceptions by the General Accounting Office.

(a) During the first 30 days after receipt by it of the audit status notice the General Accounting Office will continue to issue informal inquiries before issuing exceptions; thereafter and until the audit status date, it will issue exceptions without issuing informal inquiries. Only those exceptions listed in the General Accounting Office final audit status letter will be considered as outstanding at that time; all informal inquiries will either be converted by the General Accounting Office to exceptions at the time of issuance of that letter or be deemed to have been

cleared. Upon receipt of replies to exceptions, the General Accounting Office will promptly furnish notice that the reply is satisfactory or will promptly issue a revised exception. No exceptions (other than pro forma exceptions) will be issued after the audit status date.

(b) All replies to exceptions and informal inquiries shall advise the General Accounting Office of the disposition to be made of the particular item in the final settlement and shall contain complete information justifying the payments in question. Replies shall be submitted promptly. After the audit status date, a final attempt shall be made by the TCO to clear with the General Accounting Office all outstanding exceptions and reclaim vouchers prior to final settlement.

§ 8.404-8 Final settlement.

(a) The TCO may proceed with completion of the settlement and execution of an appropriate settlement agreement at any time after receipt of the final audit status letter. If no such letter has been received on or before the 15th day following the audit status date, the TCO may proceed on the basis that there are no outstanding exceptions.

(b) The fee shall be adjusted as provided in § 8.406.

(c) The final settlement agreement may include all claims of the Government and of the contractor under the terminated contract, except that no amount may be allowed for any item of cost which is the subject of a General Accounting Office exception, either cleared by deduction or uncleared, or for any other item of cost of the same nature, unless a reclaim voucher covering such cost has been presented by the contractor and authorized by the General Accounting Office for payment.

(d) The provisions of the contract governing the types of reimbursable costs shall constitute the basis of negotiations; however, if an overall settlement of costs is agreed upon, agreement on each separate element of cost is not necessary. In appropriate cases, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not, under any circumstances, be made the means of reimbursing contractors for costs which under the provisions of the contract are clearly not allowable.

§ 8.405 Procedure for partial termination.

§ 8.405-1 General.

(a) In the event of a partial termination, the settlement shall be limited to an adjustment of the fee, if any, and, subject to the concurrence of the PCO, a reduction in estimated cost. The fee shall be adjusted in accordance with §§ 8.405-2 and 8.406 unless the termination contracting officer determines that:

- (1) The terminated portion is clearly severable from the balance of the contract; or
- (2) Performance of the contract is virtually complete, or that performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

(b) In the case of the foregoing exceptions, the procedures in §§ 8.402, 8.403, and 8.404 are applicable.

§ 8.405-2 Submission of settlement proposal (fee only).

The contractor shall submit a settlement proposal which shall be limited to a proposed reduction in the amount of fee, if any. Such proposal shall be submitted to the termination contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with terms of the contract. The proposal may be submitted in the form prescribed in § 8.803 and set forth in F-200.547 or by letter appropriately certified. The contractor shall substantiate the amount of the fee he claims in accordance with § 8.406.

§ 8.405-3 Submission of vouchers.

In the event of a partial termination when settlement is limited to adjustment of fee, if any, the contractor shall continue to submit on Standard Form 1034 all costs reimbursable under the contract, including (a) his own costs allocable to the terminated portion of the contract, (b) cost of settlements with subcontractors properly identified as such, and (c) applicable settlement expenses. The contractor shall not be reimbursed for costs of settlements with subcontractors unless the approval or ratifications required pursuant to the contract have been obtained (see § 8.209).

§ 8.406 Adjustment of fee.

The adjusted fee to be paid, if any, shall be determined in the manner provided by the contract, generally based on percentage of completion of the contract or of the terminated portion thereof. Where this basis is used, factors such as the extent and difficulty of the work performed by the contractor (including but not limited to planning, scheduling technical study, engineering work production and supervision, placing and supervising subcontracts to the extent reasonably required, and work performed by the contractor in (a) stopping performance, (b) settling claims of subcontractors, and (c) disposing of termination inventory) shall be compared with the total work required by the contract or by the terminated portion thereof. The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion thereof is only one factor in computing the percentage of completion. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the TCO of the above factors and other relevant considerations.

§ 8.407 Termination of default.

The right to terminate a cost-reimbursement type contract for default is provided for in the Termination clause set forth in § 8.702(a). In the event of termination, the contractor shall be reimbursed his allowable costs in accordance with the clause, and an appropriate

reduction shall be made in the total fee, if any, computed in accordance with the default provisions of the contract (see par. (e) (1) (D) (II) of the clause in § 8.702(a)). The costs of preparing the contractor's settlement proposal are not allowable. A cost-reimbursement type contract does not contain any provision for recovery of excess costs of reprocurement after termination for default, but see paragraph (b) of the clause set forth in § 7.203-5(a) of this chapter with respect to failure of the contractor to replace or correct defective supplies. The procedures set forth in §§ 8.602 and 8.618 of this chapter shall be used to the extent appropriate in considering the termination for default of a cost-reimbursement type contract. A ten-day notice to the contractor prior to termination for default is required in every case by the Termination clause in § 8.702(a).

Subpart E—[Reserved]

Subpart F—Termination for Default

§ 8.600 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and application of the Default clause set forth in § 8.707 for fixed-price supply contracts, and the "Termination for Default—Damages for Delay—Time Extensions" clause set forth in § 8.709 for fixed-price construction contracts. (For cost-reimbursement type contracts, see § 8.407.)

§ 8.601 General.

(a) Termination for default is generally the exercise of a contractual right of the Government to terminate the contract in whole or in part by reason of the contractor's failure, actual or anticipatory, to perform his obligations under the contract.

(b) If the contractor can establish that his failure to perform arose out of causes beyond his control and without his fault or negligence, the contract clauses in §§ 8.707 and 8.709 provide that a termination for default shall be deemed to have been a termination for the convenience of the Government, and the rights and obligations of the parties shall be governed accordingly.

(c) The Government may also in appropriate cases exercise termination or cancellation rights in addition to those set forth in the contract clauses (see for example, paragraph (f) of the Default clause in § 8.707).

(d) For default terminations of orders under Federal Supply Schedule contracts, see § 5.108 of this chapter.

§ 8.602 Termination of fixed-price supply contracts for default.

§ 8.602-1 The Government's right to terminate for default.

Under contracts containing the Default clause in § 8.707 the Government has the right, subject to the notice requirements of the clause, to terminate the whole or any part of the contract for default if the contractor (a) fails to make delivery of the supplies or to perform the services within the time specified in the contract, (b) fails to perform

any other provision of the contract, or (c) fails to make progress so as to endanger performance of the contract.

§ 8.602-2 Effect of termination for default.

(a) Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of advance payments and progress payments, if any, applicable to such work. The Government may elect, pursuant to paragraph (d) of the Default clause (see § 8.707), to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, in the manner and to the extent directed by the contracting officer. The TCO shall not use the Default clause as authority to acquire any completed supplies or manufacturing materials unless he has made certain that the Government does not already have title thereto under some other provision of the contract. In the event manufacturing materials are to be acquired by the Government under the authority of the Default clause for the purpose of furnishing the materials to any other contractor, the TCO shall take such action only after giving due consideration to the difficulties that such contractor may encounter in making use of the materials.

(b) Subject to the provisions of paragraph (c) of this section, the Government shall pay to the contractor the contract price for any completed supplies, and the amount agreed upon by the TCO and the contractor for any manufacturing material, acquired by the Government pursuant to the Default clause.

(c) To protect the Government from overpayment for any completed supplies or manufacturing materials, that might result from failure to make provision for the Government's potential liability to laborers and materialmen for lien rights outstanding against such supplies or materials after the Government has paid the contractor therefor, the TCO shall take one or more of the following measures before making the payment referred to in paragraph (b) of this section:

(1) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims; or whether it is feasible to obtain similar bonds to cover outstanding liens;

(2) Require the contractor to furnish appropriate statements from laborers and materialmen disclaiming any lien rights they may have to the supplies and materials;

(3) Obtain appropriate agreement by the Government, the contractor and lienors assuring release of the Government from any potential liability to the contractors or lienors;

(4) Withhold from the amount otherwise due for the supplies or materials such amount as the TCO determines to be necessary to protect the Government's interest, but only if the measures set forth in subparagraphs (1), (2) and (3)

of this paragraph cannot be accomplished or are otherwise deemed inadequate;

(5) Take any other action the TCO deems appropriate considering the particular circumstances and the degree of the contractor's solvency.

(d) The contractor is liable to the Government for any excess costs incurred in procuring supplies and services similar to those terminated for default (see § 8.602-6), and for any other damages, whether or not repurchase is effected (see § 8.602-7).

§ 8.602-3 Procedure for default.

(a) Where a default termination is being considered, a decision as to the type of termination action to be taken (i.e., for default, for convenience or a no-cost cancellation) shall be made only after review by procurement and technical personnel, and by counsel to assure the propriety of the proposed action. The administrative contracting officer shall not issue a Show Cause Notice or Cure Notice without the prior approval of the purchasing office. Approval should be obtained by the most expeditious means including telephone or other electronic communications media. The PCO shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract, and applicable laws and regulations;

(2) The specific failure of the contractor and, unless time does not permit, the excuses, if any, for such failure;

(3) The availability of the supplies or services from other sources;

(4) The urgency of the need for the supplies or services and the period of time which would be required to obtain the supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(5) The degree of essentiality of the contractor in the Government procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(7) Any other pertinent facts and circumstances.

(b) (1) If the foregoing consideration indicates that termination for default is appropriate, the PCO should, if practicable, notify the contractor by letter of the possibility of such termination. This letter shall call the contractor's attention to his contractual liabilities in the event the contract is terminated for default and request an explanation of the contractor's failure to perform the contract. The letter may further state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists. When appropriate, the letter may invite the contractor to discuss the matter at a conference.

(2) When a termination for default appears imminent, a written notification of that fact (not an actual notice of default) may be given by the PCO to the surety at both its home and local offices.

(3) If it is requested by the surety, and agreed to by the contractor and his assignees, if any, arrangements may be made to have future checks mailed to the contractor in care of the surety. In such a case, the contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing of checks.

(c) If, after compliance with the foregoing procedures, the PCO determines that termination for default is proper, he shall, where the termination is predicated upon the contractor's failure to make timely deliveries, issue a notice of termination at once—except in the Air Force, a notice shall be issued by a contracting officer designated for this purpose. If the termination is predicated upon any other failure of the contractor, the PCO (or, in the Air Force, the contracting officer designated for this purpose) shall give the contractor written notice specifying such failure and providing a period of 10 days (or such longer period as the PCO may authorize) in which to cure such failure. Where appropriate, this notice may be made a part of the letter described in paragraph (b) of this section. Upon expiration of the 10 days (or longer period), the PCO—or in the Air Force a contracting officer designated for this purpose, may issue a notice of termination for default unless he determines that the failure to perform has been cured. Formats of letters that may be used by the termination contracting officer with respect to paragraph (b) of this section and this paragraph are set forth in § 8.111.

(d) The notice of termination for default shall:

(1) Set forth the contract number and date;

(2) Describe the acts or omissions constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or a specified portion of the contract) is terminated;

(4) State that the supplies or services terminated may be procured against the contractor's account, and that the contractor will be held liable for any excess costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(6) State that the notice constitutes a decision that the contractor is in default as specified, and that the contractor has the right to appeal as specified in the Disputes clause.

If the PCO—or in the Air Force, the contracting officer designated for this purpose, has investigated the contractor's excuses for the failure to perform, the notice of termination shall also state that it constitutes a decision that the failure to perform was not due to causes beyond the control and without the fault or negligence of the contractor, and that

the contractor has the right to appeal as specified in the Disputes clause.

(e) The same distribution shall be made of the termination notice as was made of the contract. A copy thereof shall also be furnished to the contractor's surety at the same time that the notice is furnished to the contractor. The surety at the same time should be requested to advise if he desires to enter into any arrangement for completion of the work. In addition, the disbursing officer involved shall be notified to withhold further payments under the terminated contract pending further advice which should be furnished at the earliest practicable time.

(f) If the PCO—or in the Air Force, the contracting officer designated for this purpose, determines that the contractor's failure to perform arose from causes beyond his control and without his fault or negligence, the PCO shall not terminate the contract for default. If it is in the best interest of the Government to do so, the contract may be terminated for the convenience of the Government.

(g) If the PCO—or in the Air Force, the contracting officer designated for this purpose, has not been able to determine, prior to issuance of the notice of termination, whether the contractor's failure to perform arose from causes beyond his control and without his fault or negligence, he shall make a written decision on that point as soon as practicable after issuance of the notice of termination. Such decision shall be delivered promptly to the contractor with a notification that he has the right to appeal as specified in the Disputes clause.

§ 8.602-4 Procedure in lieu of termination for default.

The following courses of action, among others, are available to the PCO—or in the Air Force the contracting officer designated for this purpose, in lieu of termination for default, when in the best interest of the Government:

(a) Permit the contractor, his surety, or his guarantor, to continue performance of the contract under a revised delivery schedule (see § 10.112(b) of this chapter for requirement of notification of surety);

(b) Permit the contractor to continue performance of the contract by means of a subcontract, or other business arrangement with an acceptable third party: *Provided*, The rights of the Government are adequately preserved; or

(c) If the requirement for the supplies and services specified in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in § 8.602-7, execute a no-cost termination settlement agreement utilizing the form set forth in §§ 8.805-6 and 8.805-7 as a guide.

§ 8.602-5 Memorandum by the contracting officer.

In all cases where a contract is terminated for default or where a procedure authorized by § 8.602-4 is followed,

the PCO—or in the Air Force the contracting officer designated for this purpose, shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

§ 8.602-6 Repurchase against contractor's account.

(a) Where the supplies or services are still required after termination, repurchase of supplies or services which are the same as or similar to those called for in the contract, shall be made against the contractor's account as soon as practicable after termination. Such repurchase shall be at as reasonable a price as practicable considering the quality required by the Government and the time within which the supplies or services are required. The contract of repurchase may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed, but excess cost may be charged against the defaulting contractor for no more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract). Generally, the PCO's decision to repurchase will be made prior to issuance of the termination notice.

(b) If the repurchase is for a quantity not in excess of the undelivered quantity terminated for default, the requirements of 10 U.S.C. 2304(a), with respect to formal advertising, are inapplicable. However, the PCO may use formal advertising procedures. If the PCO decides to negotiate the repurchase contract, he may either (1) use any authority listed in § 3.201 through § 3.217 of this chapter (10 U.S.C. 2304(a) (1)-(17)), as appropriate, or (2) if none of those authorities to negotiate is used, the contract shall identify the procurement as a repurchase in accordance with the provisions of the Default clause in the defaulted contract. If the repurchase is for a quantity in excess of the undelivered quantity terminated for default, the entire quantity shall be treated as a new procurement.

(c) If repurchase is effected at a price in excess of the price of the supplies terminated, the TCO shall make a written demand on the contractor for the total amount of such excess giving due consideration to any increases or decreases in other ascertainable costs such as transportation, discounts, etc., and shall take such other action as is required by Subpart F, Part 163 of this chapter, for collecting claims in favor of the Government.

§ 8.602-7 Other damages.

(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see § 8.602-4), the TCO shall take appropriate action in accordance with Subpart F, Part 163 of this chapter, for ascertainment and collection of any liquidated damages to which the Government may be entitled under the contract. Pursuant to the contract provisions for liquidated damages in § 7.105-5 of this chapter, such damages are in addition to any excess cost of procurement.

(b) If the Government has suffered any other ascertainable damages as a result of the contractor's default, the TCO, on the basis of legal advice, shall take appropriate action to assert the Government's claim for such damage in accordance with Subpart F, Part 163 of this chapter.

Subpart G—Clauses

§ 8.700 Scope of subpart.

This subpart contains certain contract clauses related to the termination of contracts for the convenience of the Government and for default. Special purpose clauses when authorized by Departmental procedures and consistent with the policies set forth in this subchapter may be used in appropriate cases.

§ 8.701 Termination clause for fixed-price contracts.

(a) Except as otherwise permitted by § 8.705, the following clause shall be used in any fixed-price contract in excess of \$2,500 for supplies or experimental, developmental, or research work other than experimental, developmental, or research work with educational or non-profit institutions, where no profit is contemplated. The following clause shall be used in all fixed price construction contracts in excess of \$10,000 except that paragraphs (e) and (f) thereof shall be deleted and the paragraphs in paragraph (b) of this section shall be used.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (APRIL 1966)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall,

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver to the Government, in the manner, at the times, and

to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government.

(vii) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however*, That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1 year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1 year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the

amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided*, That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (vii) above) and not therefore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (i) hereof;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above); and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Service Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however*, That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made re-

ducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontract thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (i) and (ii) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

(f) Any determination of costs under paragraph (e) or (e) hereof shall be governed by the principles for consideration of costs set forth in Section XV, Part 2, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be

entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

(b) The following paragraphs shall be used in place of (e) and (f) of the above clause when the contract is for construction in excess of \$10,000.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) The cost of such work;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however*, That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (ix); and any other reasonable cost incidental to termination of work

under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in section XV, Part 4, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(c) In any contract for Architect-Engineer services in excess of \$10,000, the clause in paragraph (a) of this section as modified by paragraph (b) of this section shall be used, the term "Architect-Engineer" shall be substituted for the term "Contractor", and the following paragraph (e) shall be used in place of paragraph (e) therein:

(e) In the event of the failure of the Architect-Engineer and the Contracting Officer to agree as provided in paragraph (d), upon the whole amount to be paid to the Architect-Engineer by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Architect-Engineer the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed work and services accepted by the Government, the price or prices specified in the contract for such work, less any payments previously made;

(ii) The total of—

(A) the costs incurred in the performance of the work and services terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under paragraph (e) (i) hereof;

(B) the cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under (A) above); and

(C) a sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however*, That if it appears that the Architect-Engineer would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss; and

(iii) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (ix); and any other reasonable cost incidental to the termination of work under this contract, including expense incidental to the determination of the amount due to the Architect-Engineer as a result of the termination of work under this contract.

The total sum to be paid to the Architect-Engineer under (i) and (ii) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Architect-Engineer under (ii) above, the fair value, as determined by the contracting officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or a buyer pursuant to paragraph (b) (vii).

(d) In accordance with § 163.119 of this chapter, the last sentence of paragraph (j) of the clause in paragraph (a) of this section may be deleted in contracts with agencies of the U.S. Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 3.702 Termination clause for cost-reimbursement type contracts.

(a) The following clause shall be used in any cost-reimbursement type contract, as defined in § 3.405 of this chapter, for supplies and experimental, developmental, or research work other than experimental, developmental, or research work with educational or nonprofit institutions where no fee is contemplated. The following clause shall be used in all cost-reimbursement type construction contracts except that paragraph (e) (i) (D) (II) thereof shall be deleted and the paragraph in paragraph (b) of this section substituted therefor:

TERMINATION (JULY 1962)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(i) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of 10 days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the

Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) Transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government: (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however*, That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (a), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any

Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) If the settlement includes cost and fee—

(A) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however*, That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) There shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract;

(C) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, thereunder, together with reasonable storage transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however*, That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) There shall be included therein a portion of the fee payable under the contract determined as follows—

(I) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(ii) If the settlement includes only the fee, the amount thereof will be determined in accordance with the subparagraph (i) (D) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e)

above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(b) In all cost-reimbursement type construction contracts paragraph (e) (i) (D) (II) above should be deleted and the following substituted:

(II) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee as the actual work in place bears to the total work in place required by the contract. (JAN. 1965)

(c) In any contract for Architect-Engineer services where the clause in § 8.702(a) is used, the term "Architect-Engineer" shall be substituted for the term "contractor" wherever that term appears in the clause and paragraph (e) (i) (D) (II) shall be deleted and the following clause substituted therefor:

(II) In the event of the termination of this contract for the default of the Architect-Engineer, the total fee payable shall be such proportionate part of the fee as the weighted value of the actual working drawings completed bears to the weighted value of the

working drawings required or contemplated by the contract. (JANUARY 1965)

(d) In accordance with § 163.119 of this chapter, the last sentence of paragraph (i) of the clause in paragraph (a) of this section may be deleted in contracts with agencies of the U.S. Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 8.703 [Reserved]

§ 8.704 Research and development contracts with educational and other nonprofit institutions.

§ 8.704-1 Termination clause.

The following clause shall be used in any contract for experimental, development, or research work (whether fixed-price or cost-reimbursement type) with an educational or nonprofit institution; provided such contract is placed on a no-fee or no-profit basis.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (FEBRUARY 1968)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such cancelled commitments the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than 1 year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such 1 year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement

Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in section XV, Part 3, of the Armed Services Procurement Regulation, as in effect on the date of this contract, except that if the Contractor is not an educational institution the determination shall be governed by section XV, Part 2, thereof.

(e) Subject to the provisions of paragraph (c) above, and subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however*, That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

- (i) Completed or partially completed plans, drawings and information; and
- (ii) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

§ 8.704-2 Suggested clause for subcontracts.

The above clause, suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with educational or nonprofit institutions; provided, such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Subpart C, Part 15 of this chapter; and provided further such subcontracts are placed on the no-fee or no-profit basis.

§ 8.705 Short form termination clauses for fixed-price type contracts.

§ 8.705-1 Supply and service contracts.

(a) To facilitate the handling of purchases under fixed-price supply or service contracts not to exceed \$10,000, the short form termination clause set forth below is authorized for use in lieu of any other clause providing for termination for the convenience of the Government; provided, such contracts obligate the Government to order or otherwise to be liable for a minimum quantity.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FEBRUARY 1968)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is so terminated, the Contractor shall be compensated in accordance with ASPR Section VIII, in effect on this contract's date.

(b) To facilitate the obtaining of services where it can reasonably be determined that the kind and volume of service required would not, in the event of termination for convenience of the Government, present a basis for a termination claim other than for services rendered (such as, but not limited to, most contracts for rental of unreserved garage space, meals for inductees, or laundry and dry-cleaning services), the short form termination clause set forth below is authorized for use in such service contracts, regardless of dollar value, in lieu of any other clause providing for termination for the convenience of the Government.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FEBRUARY 1968)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

§ 8.705-2 Construction contracts.

Generally, there is no need for a termination clause in construction contracts not in excess of \$10,000. However, where the contracting officer determines that a termination clause should be included in such a contract, the following clause shall be used:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (JAN. 1965)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of

the Government. If this contract is so terminated, the rights, duties and obligations of the parties hereto shall be in accordance with the applicable Sections of the Armed Services Procurement Regulation in effect on the date of this contract.

§ 8.705-3 Architect-engineer contracts.

The clause in § 8.705-2 shall be used in Architect-Engineer contracts not in excess of \$10,000.

§ 8.706 Subcontract termination clause.

The following termination clause is suggested for use in fixed-price subcontracts.

TERMINATION (APR. 1966)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of termination, and date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the Contract as may not be terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;

(iv) Assign to the buyer, in the manner, and to the extent directed by the buyer all of the right, title and interest of his seller under the orders or subcontracts so terminated;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver to the buyer in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(vii) Use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (vi) above: *Provided, however*, That the seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary or as the buyer may direct for protection

and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer his termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination. Upon failure of the seller to submit his termination claim within the time allowed, the buyer may determine, on the basis of information available to him, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, he shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided*, That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the seller the amounts determined by the buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid or to be paid for under (i) above; and

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the buyer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this con-

tract, to be fair and reasonable: *Provided, however*, That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (i) and (ii) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (i) and (ii) (A) above the fair value as determined by the buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b)(vii).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

(h) The buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by the seller in respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate of 8 percent per annum for the period from the date such excess payment is received by the seller to the date on which such excess is repaid: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies

and principles set forth in section VIII of the Armed Services Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of 3 years after final settlement under the contract shall make available to the buyer and the Government at all reasonable times at the office of the seller all his books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder or to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

In accordance with § 163.119 of this chapter, the last sentence of paragraph (h) in the above clause may be deleted in subcontracts with agencies of the U.S. Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 8.707 Default clause for fixed-price supply contracts.

Insert the following clause:

DEFAULT (JUNE 1964)

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to

be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 8.708 Excusable delays clause for cost-reimbursement type contracts.

(a) *General*. The following clause shall be used in all cost-reimbursement type supply contracts as defined in § 7.202 of this chapter, in all cost-reimbursement type construction contracts, and in all cost-reimbursement type research and development contracts that contain the Termination clause in § 8.702. It may be used in contracts that contain the Termination clause in § 8.704.

EXCUSABLE DELAYS (JULY 1958)

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination".

(b) *Architect-engineer contracts*. The following clause shall be inserted in each cost-reimbursement type Architect-Engineer contract:

EXCUSABLE DELAYS (JAN. 1965)

The Architect-Engineer shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Architect-Engineer to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Architect-Engineer. Such causes may include but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Architect-Engineer. Upon request of the Architect-Engineer, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the completion dates shall be revised accordingly subject to the rights of the Government under the clause of this contract entitled "Termination".

§ 8.709 Default clause for fixed-price construction contracts.

(a) The following clause shall be used in each fixed-price construction contract in excess of \$10,000:

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (JUNE 1964)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the

contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(b) During a period of national emergency, paragraph (d) of the above clause may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather," after the word "causes" wherever it appears. Where Standard Form 23A is used, the words "Disputes clause of this contract" in the foregoing paragraph need not be substituted for "Clause 6 of these General Provisions".

§ 8.710 Default clause for fixed-price research and development contracts.

(a) The following clause shall be used in all fixed-price research and development contracts as defined in § 7.301 of this chapter except:

(1) As provided in paragraph (b) of this section; and

(2) Contracts with educational or non-profit institutions which are awarded on the basis of no profit.

DEFAULT (JULY 1962)

(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written Notice of Defaults to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of

causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not therefore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government and, (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause.

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(b) In contracts which do not contain a clause providing for termination for convenience of the Government, add the following sentence to paragraph (e) of the clause set forth in paragraph (a) of this section:

If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

§ 8.711 Default clause for fixed-price architect-engineer contracts.

The following clause shall be inserted in each fixed-price Architect-Engineer contract:

TERMINATION FOR DEFAULT (JANUARY 1965)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Architect-Engineer shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Architect-Engineer to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt by the Architect-Engineer of a notice specifying the default.

(b) If the contract is so terminated, the Government may take over the work and services and prosecute the same to completion by contract or otherwise, and the Architect-Engineer shall be liable to the Government for any excess cost occasioned to the Government thereby.

(c) The contract may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Architect-Engineer. Such causes may include, but are not restricted to acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Architect-Engineer, and the Architect-Engineer, within ten days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his finding of fact shall be final and conclusive on the parties, subject only to appeal as provided in the clause of this contract entitled "Disputes".

(d) If, after Notice of Termination of the contract under the provisions of this clause, it is determined for any reason that the Architect-Engineer was not in default under the provisions of this clause or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the clause of this contract entitled "Termination for the Convenience of the Government."

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Subpart H—Forms

§ 8.800 Scope of subpart.

This subpart prescribes certain forms related to the termination and settlement of contracts.

§ 8.801 Notice of termination.

§ 8.801-1 Telegraphic notice of termination.

(a) The following form of telegraphic notice is approved for use where a contract for supplies is being completely terminated.

Date _____

XYZ CORPORATION,
New York, N.Y.

Your contract No. _____ is hereby terminated in its entirety pursuant to clause _____ of the contract effective [Here insert "immediately" or "on _____ 19__" (Inserting the date) or "as soon as you have delivered thereunder including previous deliveries the following items" (listing items)]. Immediately stop all work, terminate subcontracts and place no further orders except to extent (insert if applicable—necessary to perform any portion thereof not terminated hereby or) that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

(Name and rank)
Contracting Officer

(b) The following form of telegraphic notice is approved for use where a contract for supplies is being partially terminated.

Date _____

XYZ CORPORATION,
New York, N.Y.

Your contract No. _____ is hereby partially terminated pursuant to clause _____ of the contract effective on _____ 19__, on which date you will reduce its total number of items to be delivered as follows (Inserting instructions as to reduced deliveries) immediately stop all work, terminate subcontracts and place no further orders except to extent necessary to perform any portion thereof not terminated hereby or that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

(Name and rank)
Contracting Officer

(c) The following form of telegraphic notice is approved for use where a contract for construction is being completely terminated for the convenience of the Government.

Date _____

XYZ CORPORATION,
New York, N.Y.

Your contract No. _____ for construction of _____ is hereby terminated effective immediately for the convenience of the Government pursuant to clause _____ of the contract. Immediately stop all work, terminate subcontracts and place no further orders. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

(Name and rank)
Contracting Officer

(d) The following form of telegraphic notice is approved for use where a con-

tract for construction is being partially terminated for the convenience of the Government:

Date _____

XYZ CORPORATION,
New York, N.Y.

Your contract No. _____ for construction of _____ is hereby partially terminated effective immediately for the convenience of the Government pursuant to clause _____ of the contract to the following extent: _____ immediately stop all work, terminate subcontracts and place no further orders except to extent necessary to perform portion thereof not terminated hereby telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

(Name and rank)
Contracting Officer

§ 8.801-2 Letter notice of termination.

(a) The following form of Notice of Termination is approved for use where a prime contract for supplies and services is being terminated. With appropriate modifications, it is suitable for use in terminating subcontracts.

LETTER NOTICE OF TERMINATION TO PRIME CONTRACTORS

[At the top of the notice set out all special details relating to the particular termination: e.g., name and address of company, number of prime contract terminated, service involved, appropriation or allotment, etc.]

[Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.]

1. *Effective date of termination.* This letter will confirm the Government's telegram to you dated _____, 19__, terminating [in part] your Contract No. _____ (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with the clause thereof entitled "Termination for the Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination"]. Such termination is effective on the date and in the manner stated in such telegram.

(or)

1. *Effective date of termination.* You are notified that your Contract No. _____ (hereinafter referred to as "the contract") is hereby terminated [in part] for the convenience of the Government, in accordance with the clause thereof entitled "Termination for the Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination"]. Such termination will be effective: _____ [Here insert either "immediately upon your receipt of this Notice" or "on _____ 19__" (inserting the date) or "as soon as you have delivered under the contract the following number of each of the items listed below, including those heretofore delivered, to wit: _____" or, "on _____ 19__ on which date you are hereby directed to reduce the total number of items to be delivered under the contract as follows": (here insert instructions as to reduced deliveries.)]

2. *Cessation of work and notification to your immediate subcontractors.* (a) You

shall stop all work, make no further shipment, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear [or avoid damage to] equipment or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. [If you believe the authorization referred to in (3) above is necessary or advisable, you shall immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.] You shall keep adequate records of your compliance with this paragraph 2(a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination, and (iii) the extent of completion of performance on such effective date.

(b) You shall give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government, (2) state that it has been terminated (or terminated in part, if that is the case) for the convenience of the Government, (3) instruct him to stop all work, to make no further shipments to place no more orders, and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in paragraph 2(a)), (4) direct him to submit his settlement proposal promptly in order to expedite settlement, and (5) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated contract or which have resulted in or which are intended to result in a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain, or dispose of. (The Contracting Officer shall also be promptly notified of any such proceedings brought after receipt of this notice.)

(d) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. *Termination inventory.* (a) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes: [insert proper identification or "None"].

(b) In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see ASPR, section XXIV.

4. *Completed end items.* You shall notify the Contracting Officer of the number of articles completed under the contract and still on hand, and arrange with him for their delivery or other disposal. Subject to ASPR 8-306, you will invoice acceptable completed end items under the contract in the usual way and not include them in your settlement proposal.

5. *Patents.* Your attention is called to any provisions of the contract which may require you to make a disclosure of, and to deliver

to the Government instruments of license or assignment respecting all inventions, discoveries, and patent applications made by you in the performance of the contract. You are urged to forward such disclosures and instruments of license or assignment to the Contracting Officer promptly, inasmuch as these contractual obligations must be complied with before execution of the final settlement agreement. This paragraph may be disregarded if the contract contains no such patent provisions.

6. *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the provisions of ASPR Section VIII.

7. *Employees affected.* (a) If this termination, together with all other outstanding terminations, will necessitate a significant reduction in your work force, as described in (b) below, you are urged to (1) promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that they can take timely action in assisting displaced workers; (2) give affected employees maximum practical advance notice of the employment reduction, and inform them of the facilities and services available to them through the local State Employment Service Offices; (3) advise affected employees to file applications with State Employment Service in order to qualify for unemployment insurance, if necessary; (4) inform officials of local unions having agreements with you of the impending reduction-in-force; and (5) inform local Chamber of Commerce and other appropriate organizations, which are prepared to offer practical assistance in finding employment for displaced workers, of impending reduction-in-force.

(b) Normally, a reduction of 200 or more workers during any one month of the period of the reduction-in-force will be considered significant. However, a reduction of a lesser number of workers in any one month, or in several successive months, also may have a serious adverse impact in a small community affected by other layoffs.

(c) To the extent appropriate and practicable, you are requested to urge subcontractors, if any, to take actions similar to those described above.

8. The contract administration office named in your contract will furnish you the name of the Contracting Officer who will be in charge of the settlement of this termination, and who will, upon request, provide you with the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

9. Please acknowledge receipt of the notice as provided below.

(Contracting officer)

ACKNOWLEDGMENT OF NOTICE

The undersigned hereby acknowledges receipt of a signed copy of the foregoing notice on _____, 19____. Two copies of this notice, both signed, are herewith returned.

(Name of contractor)

By _____

(Title)

Copy to: (Insert name of contract administration office).

(b) The following form of Notice of Termination is approved for use to confirm telegraphic notification where a contract for construction has been totally or partially terminated.

NOTICE OF TERMINATION

Date _____

XYZ Corporation,
New York, N.Y.

GENTLEMEN: Regarding contract No. _____
for construction of _____

1. *Effective date of termination.* This letter will confirm the Government's telegram to you dated _____ terminating [in part] your Contract No. _____ (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with Clause _____ thereof. Such termination is effective on the date and in the manner stated in such telegram.

2. *Cessation of work and notification to your immediate subcontractors.* (a) You shall stop all work, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this notice or (2) to the extent necessary to perform any work directed by the Contracting Officer.

(b) You shall give notice of termination to each of your immediate subcontractors and suppliers who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government; (2) state that it has been terminated for the convenience of the Government and the extent thereof; (3) instruct him to stop all work, to place no more orders and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in 2(a) above); (4) direct him to submit his settlement proposal promptly in order to expedite settlement; and (5) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of any pending or subsequent legal proceedings which relate to any subcontracts or purchase orders under the terminated contract.

(d) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. *Termination inventory.* (a) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes [insert proper identification or "None"].

(b) In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see ASPR, Section XXIV.

4. *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the applicable provisions of the Armed Services Procurement Regulation.

5. This office will be in charge of the settlement of your claim and should be consulted on any matter not covered by this notice.

6. Please acknowledge receipt of this notice as provided below.

(Contracting officer)

ACKNOWLEDGMENT OF NOTICE

The undersigned hereby acknowledges receipt of a signed copy of the foregoing notice on _____
Two copies of this notice, both signed, are returned herewith.

(Name of contractor)

By _____

(Title)

(c) The following form of Notice of Termination is approved for use where a contract for architect-engineer services is being terminated for the convenience of the Government.

NOTICE OF TERMINATION

Date _____

A-B and Associates,
New York, N.Y.

GENTLEMEN:

1. *Effective date of termination.* You are notified that your Contract No. _____ covering _____ is hereby terminated [in part] for the convenience of the Government in accordance with the clause hereof entitled "Termination for the Convenience of the Government." Such termination will be effective immediately upon receipt of this notice.

2. *Cessation of work.* You shall stop all work under the contract except (1) to the extent necessary to perform any portion thereof not terminated by this notice or (2) to the extent necessary to perform any work directed by the Contracting Officer.

3. The contract administration office named in your contract will furnish you the name of the Contracting Officer who will be in charge of the settlement of this termination, and who will, upon request, provide you with the necessary settlement forms. Matters not covered by this Notice should be brought to the attention of the undersigned.

4. Please acknowledge receipt of this Notice as provided below.

(Contracting officer)

ACKNOWLEDGMENT OF NOTICE

The undersigned hereby acknowledges receipt of a signed copy of the foregoing notice on _____
Two copies of this notice, both signed, are returned herewith.

(Architect-Engineer)

By _____

(Name)

(Title)

§ 8.802 Forms for settlement of fixed-price contracts.

The forms listed in §§ 8.802-1 through 8.802-10 and set forth in F-200.540, F-200.541, F-200.831, F-200.542, F-200.542c, F-200.543, F-200.543c, F-200.544, F-200.544c, F-200.545, F-200.545c, F-200.832, F-200.546, and F-200.548 are prescribed for use in settling terminated fixed-price contracts.

§ 8.802-1 DD Form 540—Settlement Proposal—Inventory Basis.

See F-200.540.

§ 8.802-2 DD Form 514—Settlement Proposal—Total Cost Basis.

See F-200.541.

§ 8.802-3 DD Form 831—Settlement Proposal—Short Form.

See F-200.831.

§ 8.802-4 DD Form 542—Inventory Schedule A—Metals in Mill Product Form and DD Form 542c—Inventory Schedule A—Continuation Sheet.

See F-200.542 and F-200.542c.

§ 8.802-5 DD Form 543—Inventory Schedule B—Raw Materials and DD Form 543c—Inventory Schedule B—Continuation Sheet.

See F-200.543 and F-200.543c.

§ 8.802-6 DD Form 544—Inventory Schedule C—Work in Process and DD Form 544c—Inventory Schedule C—Continuation Sheet.

See F-200.544 and F-200.544c.

§ 8.802-7 DD Form 545—Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools; and DD Form 545c—Inventory Schedule D—Continuation sheet.

See F-200.545 and F-200.545c.

§ 8.802-8 DD Form 832—Inventory Schedule E—Short Form for Use With DD Form 831 Only.

See F-200.832.

§ 8.802-9 DD Form 546—Schedule of Accounting Information.

DD Form 546 is required to be filed only once with respect to any termination. It is not required when the settlement proposal is submitted on DD Form 831. See F-200.546.

§ 8.802-10 DD Form 548—Application for partial payment.

See F-200.548.

§ 8.802-11 DD Form 1598—Contract termination status report.

See F-200.1598.

§ 8.803 DD Form 547—Settlement proposal for cost-reimbursement type contracts.

DD Form 547 is to be used by prime contractor submitting termination claims on cost-reimbursement type contracts. It is also suitable for use in connection with terminated cost-reimbursement type subcontracts. See F-200.547.

§ 8.804 DD Form 547s—Notice of audit status date.

DD Form 547s is for use by disbursing officers in accordance with § 8.404-6. See also F-200.547s.

§ 8.805 Forms of settlement agreement. See § 8.210.

§ 8.805-1 Settlement agreement for use in settling fixed-price prime contracts after complete termination.

This supplemental agreement of settlement, entered into this _____ day of _____, 19____, between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and

(1) a corporation organized and existing under the Laws of the State of _____;

(ii) a partnership consisting of _____;
(iii) an individual doing business as _____;
(hereinafter called "the Contractor").
Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19____, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, The Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production, or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in ASPR 1-201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (1) that all of his subcontract termination inventory (including scrap) has been retained or otherwise

acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 5. a. The Contractor has received the sum of \$_____ on account of work and services performed, or articles delivered, under the completed portion of the contract. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the Contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of \$_____ (Insert net amount of settlement), arrived at by deducting from the sum of \$_____ (for claim submitted on inventory basis, insert gross amount of settlement; for claim submitted on total cost basis, insert gross amount of settlement less amount set forth in 5a above), (1) the amount of \$_____ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon), and (2) the amount of \$_____ representing all applicable property disposal credits (and (3) the amount of \$_____ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6). * Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the con-

tract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ARTICLE 6. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

(The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved and which should in any event be scrutinized at the time a settlement agreement is signed (see 8-210.2) The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.)

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19_____ (Insert reference to applicable Renegotiation Act).

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(6) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(7) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to the Contractor for the performance of this contract.

(8) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(8) All rights and liabilities of the parties parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." (If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.)

In Witness Whereof, etc.

§ 8.305-2 Settlement agreement for use in settling fixed-price prime contracts after partial termination.

This supplemental agreement of settlement, entered into this _____ day of _____, 19____ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____

- (i) A corporation organized and existing under the Laws of the State of _____;
- (ii) A partnership consisting of _____;
- (iii) An individual doing business as _____

hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19____ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by Notice of Termination dated _____ the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as the "terminated portion of the contract"; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(1) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(2) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in ASPR 1-201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (Specify

*To be inserted where appropriate.

the terminated portion clearly as to items, including (i) item numbers, (ii) descriptions, (iii) quantity terminated; (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

ARTICLE 2. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 3. a. The Contractor certifies that, prior to the execution of this agreement, each of the contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 4. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 5. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 6. Upon execution of this agreement, the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of \$----- (insert net amount of settlement), arrived at by deducting from the sum of \$----- (insert gross amount of settlement), (1) the amount of \$----- representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the contract and (2) the amount of \$----- representing all applicable property disposal credits. Said sum, together with

all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the contract, except as hereinafter provided in Article 7.

ARTICLE 7. Upon payment of said sum of \$----- (insert net amount of settlement), all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease: *Provided, however*, That nothing herein contained shall impair or affect in any way any covenants, terms or conditions of the contract relating to the completed or continued portion thereof; *And provided further*, That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved.

(The following list of reserved or excepted rights and liabilities relating to the terminated portion of the contract is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 8-210.2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exception needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.)

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19----- (insert reference to applicable Renegotiation Act).

(2) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(3) All right and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." (If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.)

(4) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(5) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(6) All rights and liabilities of the parties with respect to any contract termination inventory stored for the Government pursuant to Article 2 hereof.

In Witness Whereof, etc.

§ 8.805-3 Partial settlement agreement for use in settling fixed-price prime contracts after complete or partial termination where settlement pertains only to settlements with sub-contractors.

This supplemental agreement of settlement, entered into this ----- day of -----, 19-- between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and -----

(i) A corporation organized and existing under the Laws of the State of -----

(ii) A partnership consisting of -----

(iii) An individual doing business as ----- (hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ----- under date of -----, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated ----- the Government advised the Contractor of the (complete termination of the contract for the convenience of the Government);* (partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract");* and

Whereas, the Contractor, in connection with the performance of the contract, has entered into the following subcontracts [among others]:** (Insert here a list of the terminated subcontracts included in this settlement), which subcontracts were terminated by the Contractor in accordance with the termination for convenience clause of the contract and in accordance with the Notice of Termination received by him from the Government; and

Whereas, the parties desire to settle that portion of the termination claim of the Contractor which is based upon the termination of the subcontracts listed herein; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

*Insert appropriate phrase.

**Insert where appropriate.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in ASPR 1-201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to such subcontract termination inventory, to the extent that it is not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 2. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 3. The Contractor certifies that, with respect to all items of subcontract termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. Upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of \$_____, which sum (together with the amount of \$_____ heretofore paid the Contractor as partial, progress, or advance payments),* constitutes payment in full and complete settlement, except as hereinafter provided in Article 5, of the

amount due the Contractor with respect to that portion of his termination claim which is based upon termination of the subcontracts listed hereinabove. (The first sum to be inserted above should be the net amount of this partial settlement, arrived at by deducting from the gross amount of settlements with subject subcontractors as approved by the Contracting Officer; the second amount to be inserted above, which is that portion of partial, progress, or advance payments liquidated by this agreement.)

ARTICLE 5. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

(Insert here a list of the reserved or excepted rights and liabilities of the Government and the Contractor (see § 8.210-2). Reference is made to instructions set forth in Article 6 of the agreement set forth in § 8.805-1 and Article 7 of the agreement set forth in § 8.805-2 and to the reserved or excepted rights and liabilities set forth in those articles, which may be used as appropriately modified to meet the requirements of any given settlement hereunder.)

In witness whereof, etc.

§ 8.805-4 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement includes costs.

This supplemental agreement of settlement, entered into this _____ day of _____, 19____, between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____

- (i) A corporation organized and existing under the Laws of the State of _____;
- (ii) A partnership consisting of _____;
- (iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19____, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use of disposition thereof. Termination inventory may include Government-furnished property

and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in ASPR 1-201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due

*Insert where appropriate.

and payable to the Contractor by such sub-contractors.

ARTICLE 5. a. The Contractor has received the sum of \$----- on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of \$----- (insert net amount of settlement), arrived at by deducting from the sum of \$----- (insert gross amount of settlement less amount set forth in Article 5a above), (1) the amount of \$----- representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount of \$----- representing all applicable property disposal credits (and (3) the amount of \$----- representing all other amounts due the Government under this contract except as hereinafter provided in Article 6).^{*} Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ARTICLE 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

(The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 8-210.2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following rights which are not applicable and add any additional exceptions or reservations required.)

(1) Claims by the Contractor against the Government for items of cost which are the subject of General Accounting Office exceptions (or other items of cost of the same nature), which are excluded from the settlement without prejudice to the rights of either party, as follows: (Insert the amounts and describe the claims not waived by Contractor.)

(2) Claims by the Contractor against the Government, as to which his right of reimbursement is disputed, which are excluded without prejudice to the rights of either party as follows: (Insert the amounts and describe the claims with respect to which findings have been made by the Contracting Officer disallowing the item and with respect to which the Contractor has taken, or intends to take, timely appeal.)

(3) Claims by the Contractor against the Government which are unknown in amount

and which involve costs claimed to be reimbursable under the contract, as follows: (Insert the estimated amounts and describe the claims.)

(4) Claims by the Contractor against the Government whose existence is unknown, based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the contract.

(5) Claims by the Government against the Contractor which are based upon refunds, rebates, credits, or other accounts not now known to the Government, together with interest thereon, now due or which may become due the Contractor from third parties to the extent that such amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. Any such amounts which may hereafter become due to the Contractor from any third party or other source shall be paid to the Government within 30 days after receipt by the Contractor. Interest at 6 percent per annum shall accrue and shall be paid to the Government on any such accounts as remain unpaid after the 30-day period.

(6) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19----- (Insert reference to applicable Renegotiation Act.)

(7) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(8) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(9) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(10) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(11) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(12) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(13) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(14) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." (If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.)

In Witness Whereof, etc.

§ 8.805-5 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement is limited to fee.

This supplemental agreement of settlement, entered into this ----- day of -----, 19-- between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and -----

(i) A corporation organized and existing under the Laws of the State of -----;
(ii) A partnership consisting of -----;
(iii) An individual doing business as -----; (hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ----- under date of -----, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated ----- the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, settlement of said terminated contract has been limited to adjustment of the fee.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. a. The Contractor has received the sum of \$----- on account of his fee under the contract prior to the effective date of termination.

b. In addition, upon execution of this agreement, the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of \$----- (insert net amount to be paid on account of fee). Said sum, together with all other sums heretofore paid on account of fee, constitutes payment in full and complete settlement of the amount due the Contractor on account of his fee under the contract.

ARTICLE 2. The Contractor's allowable costs under the contract will continue to be reimbursed on Standard Form 1034 cost vouchers in accordance with the applicable provisions of the contract and of Section VIII of the Armed Services Procurement Regulation.

ARTICLE 3. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

(The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 8-210.2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this

^{*}To be inserted where appropriate.

method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.)

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 1944 (insert reference to applicable Renegotiation Act).

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringement, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(6) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(7) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(8) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." (If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.)

In Witness Whereof, etc.

§ 8.805-6 No cost settlement agreement—partial termination.

This supplemental agreement of settlement, entered into this _____ day of _____, 19____, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and

- (i) A corporation organized and existing under the Laws of the State of _____;
- (ii) A partnership consisting of _____;
- (iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into contract No. _____ under date of _____, 19____, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the

convenience or option of the Government be terminated by the Government in whole or from time to time, in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

*Whereas, by the Notice of Termination dated _____, 19____, the Government advised the Contractor of the partial termination of the contract for the convenience or at the option of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract"; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

Now, Therefore, the parties hereto agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (Specify the terminated portion clearly as to items including (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

ARTICLE 2. The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the contract or by reason of its termination including, without limitation, all obligation of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the contract: *Provided, however*, That nothing herein contained shall impair or affect in any way any other covenants, terms or conditions of the contract. And, *Provided further*, That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved:

[List reserved or excepted rights and liabilities; see 8-210.2 and Article 7 of the agreement set forth in 8-805.2.]

In Witness Whereof, etc.

§ 8.805-7 No cost settlement agreement—complete termination.

This supplemental agreement of settlement, entered into this _____ day of _____, 19____, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____ (hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into contract No. _____ under date of _____, 19____, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the convenience or option of the Government be

*Omit when notice of termination has not been issued.

terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

*Whereas, by the Notice of Termination dated _____, 19____, the Government advised the Contractor of the termination of the contract for the convenience or at the option of the Government; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination;

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the contract and, except as set forth below, releases it from any and all obligations arising under the contract or by reason of its termination, and the Government agrees that all obligations arising under the contract or by reason of its termination, shall be deemed to be concluded; except as follows:

[List reserved or excepted rights and liabilities; see 8-210.2 and Article 6 of the agreement set forth in 8-805.1.]

In Witness Whereof, etc.

§ 8.805-8 Settlement agreement for use in settling cost-reimbursement type prime contracts after partial termination.

This supplemental agreement of settlement, entered into this _____ day of _____, 19____, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and

- (i) A corporation organized and existing under the Laws of the State of _____;
- (ii) A partnership consisting of _____;
- (iii) An individual doing business as _____ (hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into contract No. _____ under date of _____, 19____, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the termination clause of the contract provides that the performance of work under the contract may, at the convenience of the Government, be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such notice, to which reference is hereby made as to the part terminated, and said part is hereby referred to as "the terminated portion of the contract"; and

Whereas, it is the desire of the parties that an adjustment be made of the fee *(and of the estimated cost) under the contract as a result of such partial termination;

Now, therefore, the parties agree as follows:

ARTICLE 1. The contract is amended by deleting therefrom the terminated portion of the contract as follows: (specify the termi-

* Omit when notice of termination has not been issued.

nated portion clearly as to items, including (i) item numbers, (ii) descriptions, and (iii) quantity terminated).

*ARTICLE 2. The estimated cost of the contract is decreased by \$_____.

ARTICLE 3. The fee stated in the contract is decreased by \$_____.

ARTICLE 4. The Contractor's allowable costs and earned fee, if any, for the terminated portion of the contract will continue to be reimbursed on Form 1034 cost vouchers in accordance with the applicable provisions of the contract and of section XV of the Armed Services Procurement Regulation.

In witness whereof, the parties have executed this agreement as of the date above written.

§ 8.805-9 Format for settlement of reservations.

This supplemental agreement of settlement, entered into this _____ day of _____, 19____ between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and

- (i) A corporation organized and existing under the Laws of the State of _____;
- (ii) A partnership consisting of _____;
- (iii) An individual doing business as _____

Witnesseth that:

Whereas, the Contractor and the Government have entered into contract No. _____ under date of _____, 19____, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract has been terminated; and

Whereas, a settlement agreement was executed in connection with the termination of the contract, said settlement agreement being dated _____, and being designated as Supplement No. _____ to the contract; and

Whereas, said settlement agreement excepted from the settlement therein contained certain items as more fully described in said final settlement agreement including the item(s) described in clause 1 of this Agreement; and

Whereas, the Government and the Contractor have agreed to a settlement of said item(s) described in clause 1 of this Agreement;

Now, therefore, the parties hereto do mutually agree as follows:

CLAUSE 1. The Government agrees to pay to the Contractor the sum of \$_____ on account of the following item(s):

Item 1:

CLAUSE 2. The Contractor hereby releases and forever discharges the Government from all liability, and from all claims and demands which the Contractor now has or may hereafter have, under the contract insofar as it pertains to the contract, based upon the item(s) described in clause 1 of this Agreement.

In Witness Whereof, the parties hereto have executed this Agreement on the date first herein written.

[Type or print names under all signatures]

By _____
THE UNITED STATES OF AMERICA
(Contracting Officer)

By _____
(Name of Contractor)
(Its business address)

*Insert if appropriate.

§ 8.806 DD Form 1114—Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.

See F-200.1114.

§ 8.807 Format for the release of excess funds under terminated contracts.

From: Termination Contracting Officer located at _____
To: Purchasing Office located at _____

Subject: Terminated contract No. _____ with _____ (Contractor)

References: (a) (Cite termination notice and effective date).

(b) (Cite previous letters releasing excess funds, if any).*

1. By the referenced Termination Notice, the subject contract was (completely) (partially) terminated for the convenience of the Government.

2. On the basis of the best evidence available, it is estimated that the gross settlement costs will approximate \$_____. Therefore, the amount available for release as excess to the contract is \$_____. Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

3. The related appropriation(s) and amount(s) involved are:

Appropriation	Allocated amount(s)
_____	_____
_____	_____

(Contracting officer)
(Location)

Copies to:

§ 8.808 Format for termination contracting officer's settlement memorandum for fixed-price type contract terminated for convenience of the Government.

This memorandum shall be addressed to a reviewing authority or the file in accordance with _____.

*When prior letters releasing excess funds are cited, the following shall be used as the text of paragraph 2.

The estimated settlement costs previously reported by reference (b) in the total amount of \$_____ is hereby revised. On the best evidence now available, it is estimated that the settlement costs will approximate \$_____. Therefore, the additional amount available for release is \$_____.

PART III—TABULAR SUMMARY OF CONTRACTOR'S CLAIM

Prepare a summary substantially as follows:

(Where field recommendations are to be considered, expand the format to include such recommendations.)

Item claimed	AUDITOR'S RECOMMENDATION		Unresolved items	TCO negotiated amount
	Contractor's proposal	Cost \$ Accepted questioned		
1. Contractor's Costs as set forth on Settlement Proposal. Metals, Raw materials, etc.				
Total.				
2. Profit.				
3. Settlement Expense.				
4. Total.				
5. Settlement with Subs.				
6. Acceptable Finished Product.				
7. Gross Total.				
8. Disposal and Other Credits.				
9. Net Settlement.				
10. Partial, Progress and Advance Payments.				
11. Net Payment Requested.				

cordance with § 8.211. Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

PART I—GENERAL INFORMATION

1. Identification. (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. Description of terminated contract. a. Date of contract and contract number.

b. Type of contract (e.g., fixed price, or fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination provisions (cite ASPR designation or other special provisions).

3. Termination notice. a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.

c. State whether termination notice was amended, and if so, explain.

d. Statement whether contractor stopped work on effective termination date. If he did not, furnish details. Also state whether subcontracts were terminated promptly by the contractor.

e. Statement as to diversion of common items and return of goods to suppliers, if any.

f. Furnish information as to contract performance and timely deliveries on part of contractor.

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. Basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.

3. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

PART IV—DISCUSSION OF SETTLEMENT

1. *Contractor's cost.* a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.
- b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included therein.
- c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
- d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

- e. Comment on any unadjusted contractual changes which are included in the settlement.
- f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
- g. Furnish other information believed helpful to the Settlement Review Board or any reviewing authority in understanding the recommended settlement.
2. *Profit.* Explain the basis and factors considered in arriving at a fair profit.
3. *Settlement expenses.* Comment on and summarize those expenses not included in audit review.

- b. Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).
- c. State whether termination notice was amended, and if so, explain.
- d. Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.
- e. Audit status date. If not involved, explain.
- f. Date for clearance of General Accounting Office exceptions, if any.
- g. Brief description of extent of General Accounting Office audit as shown by report on audit status date. If report was not received within 15 days after the audit status date, state when it was received or that it was not received at all.

4. *Subcontractor's settlements.*

Approved by contracting officer.....	No. of Settlements	Net Amount
Concluded by contractor under delegation of authority.....		
Approved by Settlement Review Board.....		
No Cost Settlements.....		
Total.....		

5. *Partial payments.* Furnish total amount of partial payments, if any.
6. *Progress or advance payments.* Furnish total of unliquidated amounts, if any.
7. *Claims of the Government against the contractor included in settlement agreement reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.
8. *Assignments.* List any assignments, giving name and address of assignee.
9. *Disposal credits.* Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. *Plant clearance.* State whether all plant clearance action has been complete and all inventory sold, retained or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.
11. *Government property.* State whether all Government property has been accounted for.
12. *Special tooling.* If involved, furnish comment on disposition.
13. *Summary of settlement.* Summarize the settlement in tabular form substantially as follows:

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. *Date and amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)
2. *Basis of claim.* State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.
3. *Examination of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

PART III—TABULAR SUMMARY OF SETTLEMENT

1. *Summary.* Summarize the proposed settlement in tabular form substantially as shown in attachments A and B. Partial settlements may be summarized on attachment B.
2. *Comments.* Furnish comments in amplification of tabular summaries.
 - a. Summary of Final Settlement (see attachment A).
 - (1) If the auditor's final report was not available for consideration, state the circumstances.
 - (2) If costs subject to GAO exceptions and identical unreimbursed costs are included in the proposed settlement, explain fully including a citation of the authority therefor.
 - (3) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in 8-406.
 - (4) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.
 - (5) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.
 - (6) Show amount of GAO exceptions shown to be outstanding in final audit status letter, and explain final disposition made of all such exceptions.
 - (7) Unreimbursed costs submitted on DD Form 547. Show disposition of items of cost identical in nature with costs subject to GAO exceptions by breakdown as follows:
 - (a) Amount of items of unreimbursed costs identical in nature with costs subject to GAO exceptions.
 - (b) Amount of such items waived on settlement.
 - (c) Amount of such items excluded and reserved on settlement.
 - (8) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION

	Amount claimed	Allowed amount
Prime contractor's charges (before disposal credits).....	\$.....	\$.....
Plus: Subcontractor charges (after disposal credits).....		
Gross settlement.....		
Less: Disposal credits—Prime.....	XXXXXX	
Net settlement.....		
Less: Prior payment credits (this settlement).....		
Previous partial settlements.....		
Other credits or deductions.....		
Total.....		
Net payment.....		
Total contract price (complete termination).....		
CPIT (for partial termination).....		
Less: Total payments to date.....		
Net payment from this settlement.....		
Fund reserved for reservations.....		
Final contract price (terminated portion for partial termination).....		
Reduction in contract price.....		

14. *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

PART V—RECOMMENDATION

1. *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.
2. *Signature.* The Contracting Officer will sign and date the memorandum.

§ 8.309 Format for termination contracting officer's settlement memorandum for cost-reimbursement type contracts.

This memorandum shall be addressed to a reviewing authority or the file in accordance with 8-211. This format may be appropriately modified and used to cover subcontract settlements.

PART I—GENERAL INFORMATION

1. *Identification.* (Identify memorandum as to its purpose and content.)
 - a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.
 - b. Names and titles of contractor and Government personnel who participated in the negotiation.
2. *Description of terminated contract.* a. Date of contract and contract number.
- b. Type of contract.
- c. General description of contract items.
- d. State total contract cost and fee data if complete termination.
- e. Furnish reference to the contract termination provisions (cite ASPR or other special provisions).
3. *Termination notice.* a. Reference termination notice and state effective date of termination.

- (9) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
- (10) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
- (11) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
- (12) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken thereon.
- (13) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
- (14) Show settlements with subcontractors by breakdown as follows:

ATTACHMENT A—SUMMARY OF SETTLEMENT—COST TYPE CONTRACT*

Contract No. _____, termination No. _____

	Amount claimed	Amount allowed
1. Previous reimbursed costs—prime and subs	\$ _____	\$ _____
2. Previous unreimbursed costs	\$ _____	\$ _____
3. Total cost settlement	\$ _____	\$ _____
4. Previous fees paid—prime	\$ _____	\$ _____
5. Previous fees unpaid—prime	\$ _____	\$ _____
6. Total fee settlement	\$ _____	\$ _____
7. Gross settlement	\$ _____	\$ _____
Less: Deductions not reflected in Items 1-7:		
a. Disposal credits	\$ _____	\$ _____
b. Other charges against contractor arising from contract	\$ _____	\$ _____
8. Net Settlement	\$ _____	\$ _____
Less: Prior payment credits	\$ _____	\$ _____
9. Net payment allowed for prime contractor acquired property taken over by Government	\$ _____	\$ _____
10. Amount in connection with this settlement	\$ _____	\$ _____
11. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):	\$ _____	\$ _____
Aggregate gross amount of previous partial settlements	\$ _____	\$ _____
Aggregate net amount of previous partial settlements	\$ _____	\$ _____
Aggregate net payment provided in previous partial settlements	\$ _____	\$ _____
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements	\$ _____	\$ _____
12. Status of contract (Fill out to extent applicable):		
a. Date of discontinuance of Form 1084, cost vouchers	\$ _____	\$ _____
b. Audit status date	\$ _____	\$ _____
c. Total amount of any GAO exceptions outstanding at date of settlement	\$ _____	\$ _____

*Use applicable portion for partial settlement.

(15) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.	Total contract estimated cost plus fixed fee
Gross Settlement	\$ _____
Less: Disposal credits	\$ _____
Net Settlement	\$ _____
Less: Prior payments	\$ _____
Other credits or deductions	\$ _____
Total	\$ _____
Net Payment	\$ _____

Reduction in contract price (credit) —

(16) If the settlement is restricted to an adjustment of the fixed fee only, then the following summary will be included.

Amount of reduction in estimated costs	\$ _____
Amount of reduction in fixed fee	\$ _____
Reduction in contract price (credit)	\$ _____

PART IV—RECOMMENDATION

1. *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and

Approved by termination contracting officer.
Concluded by contractor under delegation of authority.
Approved by settlement review board.
No cost settlements
Total

ATTACHMENT B—UNREIMBURSED COSTS SUBMITTED ON DD FORM 547*

Costs	Amounts claimed by contractors' proposal	Auditor's recommendation cost quoted—Unresolved items	TCO's computation
1. Direct material			
2. Direct labor			
3. Indirect factory expense			
4. Dies, jigs, fixtures and special tools			
5. Other costs			
6. General and administrative expense			
7. Fee			
8. Settlement expense			
9. Settlement costs with subs			
10. Total costs (Items 1-9)			

*Expand the format to include recommendations of technical personnel as required.

§ 8.810 Format for application for grant of authorization.

APPLICATION FOR GRANT OF AUTHORIZATION

- (a) Name of contractor.
- (b) Address of the principal of the contractor.
- (c) Name and location of divisions of the applicant's plant for which authorization requested.
- (d) An explanation of the necessity and justification for the authorization requested.
- (e) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling claims.
- (f) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government contracting agencies and the percentage thereof applicable to each Military Department.
- (g) The number and dollar amount (estimated if necessary) of uncompleted sub-

the contractor and as such should be approved.

2. *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

Number settlements dollar amount

§ 8.810-1 Format of letter of authorization.

LETTER OF AUTHORIZATION

- (a) In consideration of your written request of (Date) and pursuant to paragraph 8-209.4 of the Armed Services Procurement

Regulation (ASPR), you are authorized, subject to the limitations of ASPR and those stated below, to settle, without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of a Department of Defense contract being modified or terminated for the convenience of the Government, or subcontracts or purchase orders which have been terminated under any other circumstances that may require the Government to bear the cost of their settlement. This authorization does not extend to the disposition of Government-furnished material and completed articles not delivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government; except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed \$_____ (insert limit of authorization being granted).

(b) This authorization is subject to the following conditions and requirements:

(1) The amount of such subcontract termination settlement does not exceed \$_____ (insert limit of authorization being granted), computed as follows:

(A) Credits for retention or other disposal of termination inventory allocated to the claim, and for advance or partial payments, shall not be deducted from the gross claim or settlement; but

(B) Amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors (except those settlements which have not been approved by the Government), shall be deducted.

(2) Any termination inventory involved has been disposed of in accordance with the Armed Services Procurement Regulation, except that screening and Government approval of scrap and salvage determinations are not required.

(3) The contracting officer may incorporate specific instructions in each Notice of Termination as to the disposition of specific items of termination inventory, or the contracting officer may, at any time prior to final settlement, issue such specific instructions. No such instructions, however, will affect any disposal action taken by you or your subcontractors prior to receipt thereof.

(4) The settlements made by you with your subcontractors and suppliers pursuant to the authorization granted herein, including sales, retention, or other dispositions of property involved in making such settlements, shall thereupon be reimbursable in accordance with the Armed Services Procurement Regulation, Section VIII, and the termination clause of the contract, and will not require approval of the contracting officer or his authorized representative.

(5) Any number of separate settlements of \$_____ (insert limit of authorization granted) or less may be made with a single subcontractor. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and must not be divided in such a way as to bring them within the authorization.

(6) The authorization to make settlements provided for herein is not to be exercised in the case of a subcontractor or supplier who is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or there is any common interest between you by reason of stock ownership, or otherwise, which is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

(vii) A representative of this office will, from time to time, review your methods used in negotiating settlements with your subcontractors and make a selective examination of such settlements made by you. Where such a review indicates that you are not adequately protecting the Government's interest, this delegation will be revoked.

§ 8.811 Delinquency notices.

The following are formats of delinquency notices which may be used to satisfy the requirements of § 8.602-3. All notices will be sent with proof of delivery requested.

CURE NOTICE¹

You are notified that the Government considers your (specify the Contractor's failure or failures), a condition that is endangering performance of the contract in accordance with its terms. Therefore, unless such condition is cured within ten (10) days after receipt hereof (or such longer time as the Contracting Officer may deem reasonably necessary) the Government may terminate subject contract for default under General Provision No. _____ (Default).

The "Cure Notice" is required by the terms of the Default clause in the contract and derives its authority therefrom. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contractually established delivery schedule or any extension thereof. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of ten (10) days or more, the "Cure Notice" should not be issued and the following "Show Cause Notice" may be used, if desired, immediately upon the expiration of the delivery period.

SHOW CAUSE NOTICE²

Since you have failed to (perform Contract No. _____ within the time required by the terms thereof) (cure the conditions endangering performance under Contract No. _____ as described to you in the Government's letter of _____), the (date)

Government is considering terminating said contract pursuant to General Provision No. _____ (Default). Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose out of causes beyond your control and without fault or negligence on your part. Accordingly, you are hereby afforded the opportunity to present, in writing, any facts bearing on the question to Commander (insert complete address, including symbol, of activity where Procuring Contracting Officer is located), with copy thereof to the undersigned for information within ten (10) days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government under General Provision No. _____ (Default) and the liabilities that may be invoked in the event a decision is made to terminate for default of the Contractor.

Any assistance rendered to you on this contract or acceptance by the Government of delinquent goods or services hereunder,

¹ Use only when the delivery schedule has not expired.

² Delivery schedule in part or in whole has expired.

will be solely for the purpose of mitigating damages, and is not to be construed as an intention on the part of the Government to condone any delinquency, or as a waiver of any rights the Government may have under subject contract.³

Pending decision you are instructed to stop all work immediately and to make no further commitments under subject contract. Advise all subcontractors and suppliers to do likewise.

PART 9—PATENTS, DATA, AND COPYRIGHTS

18. Section 9.103-3 and the introductory text of § 9.107-5(b) are revised; in § 9.111, the clause heading and clause paragraph (b) are revised; and §§ 9.202-1 (c) and 9.202-2(g)(1) are revised, as follows:

§ 9.103-3 Patent indemnification in negotiated contracts.

A patent indemnity clause is not required to be included in negotiated contracts, but may be included in negotiated construction contracts, as authorized in § 9.103(b)(2), and in negotiated contracts for supplies where such supplies normally are or have been sold or offered for sale to the public in the commercial open market, or are such supplies with relatively minor modifications made thereto. Ordinarily, the Contracting Officer, in consultation with the contractor, should be able to determine whether the supplies being purchased normally are on sale or have been sold or offered for sale to the public in the commercial open market.

(a) Subject to the foregoing and to the prohibitions in § 9.103, the clause set forth in § 9.103-1(a) is approved for use in negotiated contracts for construction work or supplies.

(b) Where a supply contract calls in part for specific components or spare parts which normally are or have been sold or offered for sale to the public in the commercial open market, or such items with relatively minor modifications, the patent indemnity clause of § 9.103-1(a) shall be modified by adding to the end of the clause either of the following sentences:

(SEPTEMBER 1964)

The foregoing shall not apply to the following: (Specifically identify the items to be excluded from the Patent Indemnity clause).

OR

(SEPTEMBER 1964)

The foregoing shall apply only to the following: (Specifically identify the items to which the Patent Indemnity clause applies).

§ 9.107-5 Clauses for domestic contracts.

* * * * *

³ Stop work instructions may be used when it is definitely known that there are no further requirements for the items or services, but an investigation must be conducted to determine whether an actionable default exists in lieu of termination for convenience. In such a situation, the following may be inserted as the final paragraph of the Show Cause Notice:

(b) *Patent rights (license) clause.* Where the contracting officer has determined that the proposed contract comes within § 9.104-4(c) and not within § 9.107-4(b), he shall include the following clause in the contract. This clause provides for the contractor to retain title to "Subject Inventions" and for the Government to acquire a royalty-free license and the additional right to grant sub-licenses.

§ 9.111 Refund of royalties.

REFUND OF ROYALTIES (FEBRUARY 1968)

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use or for rights in patents and patent applications in connection with the performance of this contract or any subcontract hereunder.

§ 9.202-1 Background.

(c) *The balancing of interests.* It is apparent that there is no necessary correlation between the Government's need for technical data and its contractors' economic interests therein. However, in balancing the Government's requirements for technical data against the contractor's interest in protecting his data, it should be recognized that there may be a considerable identity of interest. This is particularly true in the case of innovative contractors who can best be encouraged to develop at private expense items of military usefulness where their rights in such items are scrupulously protected. It is equally important that the Government foster successful contractual relationships and encourage a ready flow of data essential to Government needs by confining its acquisitions of technical data to cases of actual need. Certainly the Government must not be barred from bargaining and contracting to obtain such technical data as it needs, even though that data may normally not be disclosed in commercial practice. Moreover, when the Government pays for research and development work which produces new knowledge, products or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and where practicable to provide competitive opportunities for supplying the new products and utilizing the new processes. At the same time, acquiring, maintaining, storing, retrieving, and distributing technical data in the vast quantities generated by modern technology is costly and burdensome for the Government. For this reason alone, it would be necessary to control closely the extent and nature of data procurement. Such control is also necessary to insure Government respect for its contractors' economic interest in technical data relating to their privately developed items. The policies and procedures of this subpart

are framed in the light of these considerations.

§ 9.202-2 Policy.

(g) *Specific acquisition of data and rights.* (1) Notwithstanding any other provision of this subpart, the Government may acquire unlimited rights in any data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Any such data shall be stated in the contract schedule as a separate item and shall be separately priced. No data or rights therein shall be acquired under this section unless it is determined after a finding upon a documented record by the Head of the Procuring Activity or his designee that:

(i) There is a clear need for repro-
curement of the item, component or process to which the technical data pertains;

(ii) There is no suitable item, component or process of alternate design or availability;

(iii) The item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) Anticipated net savings in re-procurements will exceed the acquisition cost of the technical data and rights therein.

PART 10—BONDS, INSURANCE, AND INDEMNIFICATION

19. Section 10.103-1(a) is revised; in § 10.201-2, paragraph (a) and the second sentence of paragraph (d) are revised; and §§ 10.404(b) (2) and 10.405 are revised, as follows:

§ 10.103-1 Performance bonds.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a-270e), in connection with any construction contract exceeding \$2,000 in amount except as provided in § 10.103-3, a performance bond shall be required in a penal amount deemed adequate by the Contracting Officer for the protection of the Government. Generally, the penal amount of each performance bond shall be 100 percent of the contract price at the time of award. But where the Contracting Officer finds that to require a 100 percent performance bond would be disadvantageous to the Government, he may prescribe a lesser penal amount, which should normally be not less than 50 percent of the original contract price; and in all cases no less than the amount of the payment bond. The performance bond shall specifically provide coverage for taxes imposed by the United States

which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished.

§ 10.201-2 Individual sureties.

(a) *Acceptability.* Individual sureties are acceptable for all types of bonds other than position schedule bonds. An individual surety shall be a citizen of the United States, except that if the contract and bond are executed in any foreign country, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, or any other territory or possession of the United States, such surety need only be a permanent resident of the place of execution of the contract and bond.

(d) *Justification.* * * * The contracting officer must next ascertain that each individual surety, underwriting a bond or consent of surety which increases the penal amount of a bond previously furnished, justifies his net worth "in a sum not less than the penalty of the bond" as required by Instruction No. 4 on the reverse of Standard Form 28, "Affidavit of Individual Surety." * * *

§ 10.404 Aircraft—ground and flight risk.

(b) * * *

(2) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the foregoing clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the foregoing clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in § 10.504, suitably adapted for use in a fixed-price type contract, shall be used.

§ 10.405 Work on a Government installation.

(a) Insert the following clause in all contracts requiring work on a Government installation, except the following:

- (1) Contracts of \$2,500 or less;
- (2) Where only a small amount of work is required on a Government installation (e.g., a few brief visits per month);
- (3) Where all work on a Government installation is to be performed outside the United States, its possessions, and Puerto Rico.

The coverage specified in § 10.501 is the minimum requirement and shall be included in the contract schedule; additional coverage and higher limits may be required in the contracting officer's discretion.

INSURANCE (FEBRUARY 1968)

(a) The Contractor shall, at his own expense, procure and maintain during the entire performance period of this contract insurance of at least the kinds and minimum amounts set forth in the Schedule.

(b) At all times during performance, the Contractor shall maintain with the Contracting Officer a current certificate of insurance showing at least the insurance required by the Schedule, and providing for thirty (30) days' written notice to the Contracting Officer by the insurance company prior to cancellation or material change in policy coverage.

(c) The Contractor shall also require all first-tier subcontractors who will perform work on a Government installation to procure and maintain the insurance required by the Schedule during the entire period of their performance. The Contractor shall furnish (or assure that there has been furnished) to the Contracting Officer a current certificate of insurance meeting the requirements of (b) above for each such first-tier subcontractor, at least five (5) days prior to entry of each such subcontractor's personnel on the Government installation.

(b) The clause in paragraph (a) of this section may also be included in contracts described in paragraph (a) (1), (2) and (3) of this section when the contracting officer judges this to be in the interest of the Government. In such contracts, if appropriate, any of the kinds of insurance listed in § 10.501 may be omitted from the schedule, and the limits may be lowered.

PART 11—TAXES

20. Section 11.401-1(a) is revised; in § 11.401-2, paragraph (a) is revised, paragraph (c) is revoked, and paragraph (d) is redesignated as paragraph (c); and § 11.401-4 is revised, as follows:

§ 11.401-1 Advertised and certain negotiated contracts.

(a) *Use of clause.* The clause set forth in paragraph (c) of this section shall be used in:

(1) All formally advertised contracts except construction contracts which do not exceed \$10,000;

(2) All competitively negotiated fixed-price contracts in excess of \$10,000;

(3) All noncompetitive negotiated fixed-price contracts in excess of \$10,000, when use of the clause set forth in § 11.401-2(c) is not required; and

(4) Any negotiated fixed-price contract in excess of \$2,500 but not in excess of \$10,000, at the discretion of the contracting officer.

§ 11.401-2 Noncompetitive negotiated contracts.

(a) *Use of clause.* The clause set forth in paragraph (c) of this section shall be used in all noncompetitive negotiated fixed-price contracts in excess of \$10,000, where the contracting officer is satisfied

(1) that the contract price does not include contingencies for State and local taxes and (2) that unless this clause is used the contract price will include such contingencies.

(c) [Revoked]

(d) [Redesignated]

§ 11.401-4 Matters requiring special consideration.

(a) A contract may, in accordance with paragraph (b) of this section, provide that the contract price include or exclude a specific tax, or require that the contractor take certain actions with regard to nonpayment, payment, protest or other treatment of a specific tax. Such special treatment may be required, for example, where the State or local tax law has been recently changed, where there is doubt as to the applicability or allocability of the tax, or where the applicability of the tax is being litigated.

(b) The specific provisions described in paragraph (a) of this section shall be used only with the approval of the officials designated in § 11.000(b) except in the case of the Air Force, approval may be given by the Staff Judge Advocate of the Air Force Logistics Command.

(c) (1) Whether State or local taxes are applicable to a purchase of supplies by the Government may depend upon the place and terms of delivery. For example, if the legal incidence of a State tax is on the vendor, and performance of the contract and delivery to the Government are in that State, the tax may apply. If, however, the contract requires delivery to the Government outside that State, the tax may not apply because the transaction is in interstate commerce. The form of bill of lading used (i.e., Government bill, commercial bill, commercial bill convertible to Government bill at destination) may also affect the taxability of the transaction.

(2) Where a contract will be in a substantial amount, available alternative places and terms of delivery should be considered in the light of possible tax consequences.

(d) When Government property is provided under a facilities contract, the contracting officer shall review the facilities contract when negotiating a subsequent supply contract to assure that the contractor is not reimbursed twice for the same taxes.

PART 12—LABOR

21. Sections 12.101-1(c), 12.101-3 (b) (2) and (e), 12.101-5(b) (3) and (4), and 12.604 are revised, as follows:

§ 12.101-1 General.

(c) No Department shall take any independent action which would have the effect of establishing major policy with respect to labor relations matters. Approval of the Office of the Assistant Secretary of Defense (Installations and Logistics) will be obtained on major policies relating to potential and actual work stoppage matters. Recommenda-

tions for plant seizure, injunctive action or resolution of interservice disagreements would be examples of actions establishing major policy relating to work stoppage matters. Approval of the Assistant Secretary of Defense (Manpower) will be obtained on major policies relating to all other labor relations matters.

§ 12.101-3 Reporting of labor disputes.

(b) * * *

(2) *Reports involving Navy contracts.* Reports shall be submitted simultaneously to the Chief of Naval Material, Attention: Labor Relations Advisor (MAT 02L); Head of the Procuring Activity concerned; cognizant contracting officers; inspection offices concerned; status control activities; and the Deputy Commander for Transportation (NAVSUP 05), Naval Supply Systems Command, when contracts involve (i) packing, crating, and drayage of household goods; and (ii) stevedoring services at naval activities.

(e) Reports shall be made to the Office of the Secretary of Defense:

(1) *Individual cases.* In any case where a Military Department determines that a labor dispute significantly affects, or threatens to affect, an important procurement, the Department concerned shall notify the Director, Production Services, OASD (Installations and Logistics), by furnishing an information copy of DD Form 1507.

(2) *Weekly reports.* A weekly report shall be made by each Military Department to the Director, Production Services, OASD (Installations and Logistics), briefly indicating those disputes which threaten important military programs and any actions taken in connection therewith. Negative reports are not required.

§ 12.101-5 Movement and removal of items from facilities affected by work stoppage.

(b) * * *

(3) If satisfactory arrangements under subparagraphs (1) or (2) of this paragraph cannot be made, the matter shall be referred to the responsible Departmental headquarters labor relations office with the information required by § 12.101-4(b). If that office is unsuccessful in obtaining the voluntary concurrences of the parties for movement of the material involved and further action to obtain the material is deemed necessary, the matter shall be referred to the Director, Production Services, OASD (Installations and Logistics).

(4) Upon review and verification that the material is critically needed and cannot be moved with the consent of the parties, the OASD (Installations and Logistics) may request the Secretary of the Military Department to order removal of the material from the plant or plants involved.

§ 12.604 Responsibilities of contracting officers.

(a) The responsibility for applying the eligibility requirements set forth in §§ 12.601 and 12.603 rests, in the first instance, with the procuring contracting officer. The Department of Labor does not conduct pre-award investigations, nor render final determinations of eligibility until the procuring contracting officer has initially determined whether the eligibility requirements have been met. When the eligibility of a bidder or offeror is challenged before award, it should be treated in a manner similar to a protest before award (see §§ 2.407-9 and 3.509 of this chapter). The procuring contracting officer should make an initial determination and should process the protest in accordance with applicable procedures for submission to the Department of Labor for a final determination.

(b) Whenever the Walsh-Healey Public Contracts Act is applicable, and pursuant to regulations or instructions issued by the Secretary of Labor and in accordance with procedures prescribed by each respective Military Department:

(1) The procuring contracting officer shall:

(i) Inform prospective contractors of the applicability of minimum wage determinations; and

(ii) Report promptly to the ACO any violation of the representation or stipulation required by the Walsh-Healey Act that he becomes aware of.

(2) The administrative contracting officers shall:

(i) Furnish to the contractor a poster (Form PC-13) and a form letter (Form PC-12) explaining the Walsh-Healey Act (forms are available through normal publication supply channels); and

(ii) Report to the Department of Labor any violation of the representations or stipulations required by the Walsh-Healey Act.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

22. Sections 15.102(c), 15.103(c), 15.104(c) (3), 15.105(c), and 15.205-26 are revised to read as follows:

§ 15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" his costs (Subpart D, Part 8 of this chapter), and for settlement of such contracts by determination (§ 8.210-7).

§ 15.103 Cost-reimbursement research contracts with educational institutions.

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" his costs (Subpart D, Part 8 of this chapter), and for settlement of

such contracts by determination (§ 8.210-7).

§ 15.104 Construction contracts.

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" his costs (Subpart D, Part 8 of this chapter), and for settlement of such contracts by determination (§ 8.210-7 of this chapter).

§ 15.105 Facilities contracts.

(c) For the determination of costs of terminated facilities contracts where the contractor elects to "voucher out" his cost (Subpart D, Part 8 of this chapter), and for settlement of such contracts by determination (§ 8.210-7).

§ 15.205-26 Patent costs.

(a) (CWAS) Costs of (1) preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures; (2) preparing documents and any other patent costs, in connection with the filing and prosecution of a United States patent application where title or royalty free license is required by Government contract to be conveyed to the Government; and (3) general counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable. (But see § 15.205-31.)

(b) (CWAS(N/A)) Costs of preparing documents and any other patent costs, in connection with the filing and prosecution of any foreign patent application, or of a United States patent application where exclusive title is retained by the contractor without the grant of a royalty free license to the Government, are unallowable. (Also see § 15.205-36.)

PART 16—PROCUREMENT FORMS

23. Sections 16.101-1 (c) and (d), 16.102, 16.204, 16.205, and 16.206-2 are revised, as follows:

§ 16.101-1 General.

(c) General Provisions (Supply Contract) (Standard Form 32) (Pending publication of an edition of the form later than the June 1964 edition, the clause set forth in § 1.805-3(a) of this chapter shall be substituted for the present provisions of clause 22, Utilization of Concerns in Labor Surplus Areas);

(d) Any other special terms for the solicitation or additional contract provisions which are prescribed by the ASPR or Departmental procedures (see § 1.108 of this chapter). (The Federal, State, and Local Taxes clause at § 11.401-1 of this chapter shall be used as a part of Standard Form 32, when that standard form is used in any advertised procurement or in any of the other circumstances set forth in § 11.401-1. In the case of a noncompetitive negotiated

fixed-price contract in excess of \$10,000, where the contracting officer is satisfied (1) that the contract price does not include contingencies for State and local taxes, and (2) that unless this clause is used the contract price will include such contingencies, the Federal, State, and Local Taxes clause at § 11.401-2 of this chapter shall be made a part of the contract.);

§ 16.102 Forms for negotiated supply or services contracts (Standard Forms 18, 26, DD ASPR Form 1270, Standard Form 32,¹ DD ASPR Form 748,¹ and Standard Forms 33, 33A, 36, and 30).

§ 16.204 General provisions—cost reimbursement supply contracts (DD ASPR Form 748).¹

§ 16.205 General provisions—fixed-price supply contracts (Standard Form 32).¹

Any negotiated contract to which Subpart A, Part 7 of this chapter, is applicable will include Standard Form 32. The addition of other clauses set forth in Subpart A, Part 7, or of other clauses not inconsistent with this subchapter, shall be accomplished by including such clauses as "Additional General Provisions" numbered consecutively. The deletion or modification of clauses contained in the form or in the "Additional General Provisions" shall be accomplished by appropriate reference or provision in an Alterations in Contract clause. These instructions must be read in conjunction with Subpart A, Part 7, to make certain that current clauses are in use at all times.

§ 16.206-2 DD Form 633 (contract pricing proposal).

DD Form 633 or one of the special forms authorized in § 16.206-3 shall be used whenever contractor or subcontractor cost or pricing data (see § 3.807-3(e) of this chapter) is required pursuant to §§ 3.807-3(a) and 7.104-42 of this chapter: *Provided, however*, That the "Cost Elements" and the "Proposed Contract Estimate" may be presented in a different format, acceptable to the contracting officer, where the contractor's or subcontractor's accounting system makes the use of the prescribed format impracticable or when required for a more effective and efficient presentation of cost or pricing information: *And provided further*, That in such cases a signed DD Form 633 or one of the special forms is required to be submitted and fully accomplished as to all items except that the "Cost Elements" and the "Proposed Contract Estimate" may be accomplished by making reference to the contractor's format.

24. Sections 16.401-1(h) and 16.404-1 (a) and (c) are revised; in § 16.404-2, in

¹Substitute the clause in § 1.805-3(a) of this chapter for clause 22 on Standard Form 32, 1964 edition, and for clause 25 on DD ASPR Form 748, January 1965 edition; substitute clause in § 1.805-3(b) for clause 43 on DD ASPR Form 748, January 1965 edition.

the contract clause, item 6 under alternate 2 is revised; and §§ 16.703, 16.705, and 16.801(b) (1) and (2)(vi) are revised, as follows:

§ 16.401-1 General.

(h) Standard Form 23-A—General Provisions (Construction Contract). Pending revision of Standard Form 23-A, the 1964 edition shall be modified by deleting Clause 3 "Changes" and Clause 4 "Changed Conditions" and by substituting in lieu thereof the clauses prescribed in §§ 7.602-3 and 7.602-4 of this chapter, respectively.

(NOTE. The Federal, State, and Local Taxes clause in § 11.401-1 of this chapter shall be used as a part of Standard Form 23-A when that Standard Form is used in any advertised procurement or in any of the other circumstances set forth in § 11.401-1. When a Standard Form 23-A is used in a noncompetitive negotiated fixed-price contract in excess of \$10,000, where the contracting officer is satisfied (1) that the contract price does not include contingencies for State and local taxes, and (2) that unless this clause is used the contract price will include such contingencies, the Federal, State, and Local Taxes clause in § 11.401-2 of this chapter shall be made a part of the contract.)

§ 16.404-1 General.

(a) The provisions of the Davis-Bacon Act relating to the predetermination of minimum wages for mechanics and laborers do not apply to contracts for dismantling, demolition or removal of improvements.

(c) The provisions of the Miller Act regarding performance and payment bonds do not apply to contracts for dismantling, demolition or removal of improvements. However, the contractor may be required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during its performance, irrespective of the fact that complete payment under the contract may be made to the Government by the contractor prior to inception of the work. The amount shall be determined in advance of bidding and shall be set forth in the invitation for bids.

§ 16.404-2 Contract format.

6. Termination for convenience of the Government. (In accordance with 8-701 (a) and (b), insert the termination clause in contracts exceeding \$10,000 in value. In contracts not exceeding \$10,000 the clause in 8-705.2 may be inserted.)

§ 16.703 Application for partial payment (DD Form 548).

DD Form 548 is prescribed for use by contractors when applying for partial payments (see § 8.213-1(a)).

§ 16.705 Forms of settlement agreement.

There are no Department of Defense forms prescribed for settlement agreements. However, appropriate approved texts for settlement agreements are set forth in § 8.805 of this chapter.

§ 16.801 Statement and certificate of award (Standard Form 1036).

(1) For each individual award, in which case the Standard Form 1036 will be attached to the copy of the award which is forwarded to the appropriate finance center; or

(2) The other contracts forwarded to the appropriate finance center and the copies retained in the contract files contain on their face the words "Standard Form 1036 filed with Contract Number -----."

PART 18—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

25. Sections 18.109, 18.205(a) (5), 18.602, 18.608, 18.609, 18.610, and 18.615 are revised, as follows:

§ 18.109 Disclosure of magnitude of construction projects.

Where the estimated value of the work is \$25,000 or more, advance notices or invitations for bids and requests for proposals shall include a statement of the magnitude in terms of physical characteristics of the proposed construction and the estimated cost thereof stated in ranges between \$25,000 and \$100,000; between \$100,000 and \$500,000; between \$500,000 and \$1 million; between \$1 million and \$5 million; between \$5 million and \$10 million; and over \$10 million. Where the estimated value of the work is less than \$25,000, advance notices or invitations for bids and requests for proposals shall include a statement that the estimated cost of the proposed construction is under \$25,000.

§ 18.205 Preinvitation notices.

(a) Include a statement of the magnitude in terms of physical characteristics and estimated cost of the proposed construction in accordance with § 18.109;

§ 18.602 Final payment.

See § 8.213-2 of this chapter. Prior to presenting the final payment voucher to disbursing officer, after termination action, the contracting officer shall ascertain whether there are any outstanding labor violations. If so, the contracting officer shall determine, pursuant to the criteria set forth in § 18.704-13, the amount to be withheld from the final payment voucher by reason of such violations.

§ 18.608 Contractor inventory.

This subpart and Part 24 of this chapter cover the disposition of all con-

tractor inventory (§ 8.101-5 of this chapter) generated under construction and architect-engineer contracts related to construction. It applies to termination inventory and to any other inventory which is:

(a) Excess because of a contract modification; or

(b) Excess under a price revision type contract;

and the cost thereof is included in the contractor's claim for an equitable adjustment or revision in price. It also applies to all property which is excess to the requirements of a cost-reimbursement type contract and includes excess Government-furnished property under any type contract.

§ 18.609 Separate schedules.

See § 24.203-2 of this chapter. Contractor equipment shall be submitted on separate inventory schedules. In addition to the requirements contained in § 24.203-2, construction equipment shall be submitted on separate schedules.

§ 18.610 Return of materials to stock.

Materials taken from stock and shipped to the construction site shall be considered common items (§§ 24.101-2 and 24.203-5 of this chapter) and shall be returned to stock unless the contractor establishes that such items cannot be utilized without loss. Contractors shall not include in their settlement proposals the cost of any materials so returned. Any costs in connection with the withdrawal, replacement or transportation of such materials may be included as "Other Costs." (Schedule B, Item 5 of DD Form 541 (§ 8.802-2).)

§ 18.615 Scope of screening.

Inventories of construction materials and equipment shall be screened in accordance with § 24.205 of this chapter, in the Army, by the Chief of Engineers; in the Navy, by the Naval Facilities Engineering Command; and in the Air Force, by the Director, Civil Engineering.

26. Sections 18.620, 18.625, 18.631, and 18.701(a) (2) are revised; in § 18.704-2, the introductory text of paragraph (g) (2) is revised; and § 18.704-4(c) is revised, as follows:

§ 18.620 Termination for convenience of Government clause for fixed-price construction contracts.

Insert the clause set forth in § 8.701(a) of this chapter, modified as provided therein, in each fixed-price type construction contract, as described in § 18.201, in excess of \$10,000.

§ 18.625 Termination for convenience of Government clause for fixed-price architect-engineer contracts.

The clause in § 8.701(a) of this chapter shall be inserted in each fixed-price type contract, as defined in § 3.404 of this chapter, for architect-engineer services in excess of \$10,000 except that the clause shall be modified as provided in § 8.701(c) of this chapter.

§ 18.631 Forms of settlement agreement—architect-engineer contracts.

The forms of settlement agreements set forth in §§ 8.805-1, 8.805-2, 8.805-4, 8.805-5, 8.805-6 and 8.805-7 of this chapter are to be used except that "Architect-Engineer" is to be substituted for "Contractor" wherever it appears.

§ 18.701 Applicability.

(a) * * *

(2) These requirements do not apply to contracts solely for dismantling and demolition or exploratory drilling.

§ 18.704-2 Wage determinations.

(g) * * *

(2) A modification which affects wage rates included in a solicitation, and which was received by the department concerned on or before the tenth calendar day preceding bid opening in formerly advertised procurements or award in negotiated procurements shall be processed upon receipt by the contracting officer as follows (note distinction between department and contracting officer):

§ 18.704-4 Additional classification.

(c) Submission.

The completed DD Form 1565 (with information and recommendations where appropriate) shall be forwarded to the Solicitor of Labor, U.S. Department of Labor, Washington, D.C. 20210, for information or final determination as required.

PART 22—SERVICE CONTRACTS

27. Sections 22.102-1, 22.102-4, 22.200, and 22.201 are revised; the introductory text of § 22.204-1 is revised; and in § 22.205, paragraphs (a) and (c) (3) and (7) are revised, as follows:

§ 22.102-1 Policy.

The Civil Service laws and regulations and the Classification Act lay down requirements which must be met by the Government in hiring its employees, and establish the incidents of employment. In addition, personnel ceilings have been established for the Department of Defense. Except as otherwise authorized by express statutory authority (e.g., 5 U.S.C. 3109 as implemented by the annual Department of Defense Appropriation Act—expert and consultant services (see Subpart B of this part)), these laws and regulations shall not be circumvented through the medium of "personal services" contracting, which is the procuring of services by contract in such a manner that the contractor or his employees are in effect employees of the Government. The contracting officer is responsible for assuring the implementation of this policy by considering the criteria in § 22.102-2 before entering into any service contract, and by obtaining a legal opinion in any doubtful case and in any case where express statutory authority for a personal service contract is to be invoked.

§ 22.102-4 Determination by contracting officer; documentation of contract file.

(a) At the time the contracting officer receives, through a purchase request or other document, any requirement for the procurement of services, he shall determine whether the procurement is proper in the light of the personal services policy in §§ 22.102—22.102-4.

(1) Unless exempted by paragraph (b) of this section, a brief memorandum of his determination that the services are nonpersonal, together with his reasons and all the facts which bear on the personal-nonpersonal question, or a memorandum of his determination that procurement of the services is expressly authorized by statute, regardless of whether personal; and

(2) An opinion of counsel obtained pursuant to § 22.102-1 in any doubtful case and in any case where express statutory authorization is invoked; and

(3) Any further documentation which may be required by Departmental implementation.

(b) The following are exempted from the documentation requirements imposed by paragraph (a)(1) of this section:

(1) Contracts for construction and contracts for architect-engineering services for preparation of designs, plans, drawings and specifications awarded pursuant to procedures of Part 18 of this chapter;

(2) Simplified small purchases issued pursuant to procedures of Subpart F, Part 3 of this chapter; and

(3) Normal routine recurring service contracts not exceeding \$10,000.

§ 22.200 Scope of subpart.

This subpart sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of expert or consultant services (including stenographic reporting services) from individuals and from firms, regardless of whether personal. This subpart does not govern employment of individual experts or consultants by excepted appointment; the requirements for such employment are set forth in personnel regulations of the Civil Service Commission and of the respective Departments.

§ 22.201 Statutory authority.

(a) Authority for the procurement by contract of expert and consultant services is found in 5 U.S.C. 3109, as implemented by annual appropriation acts or by other legislation. Most contracts for expert or consultant services are executed by the Military Departments pursuant to the authority contained in the General Provisions of the annual Department of Defense Appropriation Act.

(1) 5 U.S.C. 3109 provides:

"(a) For the purpose of this section—

(1) "Agency" has the meaning given it by section 5721 of this title; and

(2) "Appropriation" includes funds made available by statute under section 849 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency

may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) The provisions of this title governing appointment in the competitive service;

(2) Chapter 51 and subchapter III of chapter 53 of this title; and

(3) Section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services."

(2) Typical of the language which is enacted each year in the General Provisions of the Department of Defense Appropriation Act implementing 5 U.S.C. 3109 is section 601 of the Act of September 29, 1965 (P.L. 89-213; 79 Stat. 873), which provides:

"During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law: *Provided*, That such contracts may be renewed annually."

(b) Except in the case of stenographic reporting services, contracts with individuals or firms for expert and consultant services are usually negotiated, normally under the authority of 10 U.S.C. 2304(a)(4), as implemented by § 3.204 of this chapter.

§ 22.204-1 General.

Obtaining the benefit of expert or consultant services by contract, pursuant to 5 U.S.C. 3109, is subject to the following limitations:

§ 22.205 Authorization to enter into contracts: "Determinations and Findings."

(a) All contracts to be entered into pursuant to 5 U.S.C. 3109 for expert or consultant services must be authorized in writing by a Determinations and Findings (D&F) signed in accordance with Departmental regulations. Ordinarily each contract shall be separately authorized. However, when the determinations can appropriately be made with respect to a class of contracts, the authorizing official may issue blanket authority for that class of contracts by signing a class D&F.

(c) * * *

(3) A citation of statutory authority, namely, 5 U.S.C. 3109 and (except where

subparagraph (7) of this paragraph is applicable) appropriate implementing legislation; the latter may be the current annual Department of Defense Appropriation Act, a current temporary Department of Defense appropriation enactment, or other appropriate implementing legislation;

(7) An added condition, in cases where the D&F covers a period for which implementing legislation has not yet been enacted, that at the time the procurement is entered into there must be in effect a law authorizing the procurement pursuant to 5 U.S.C. 3109 and requiring no further Secretarial action than that required by the implementing legislation current at the time the D&F is issued;

28. Sections 22.206, 22.209, 22.210(a), 22.501-2, and 22.501-5(c) are revised, as follows:

§ 22.206 Requests for determinations and findings.

Requests for authorization to procure expert or consultant services pursuant to 5 U.S.C. 3109, whether from individuals or from firms, must contain statements required by Departmental regulations to support the determinations. The responsibilities of the various organizational levels in the Departments with respect to requests for D&Fs are also set forth in Departmental regulations.

§ 22.209 Contracts for stenographic reporting services.

Stenographic reporting services normally are provided by regular civilian employees appointed under the usual civil service procedures. However, under certain circumstances these services may be procured by contract from individuals or firms pursuant to 5 U.S.C. 3109, as where there are variable requirements or insufficient qualified personnel, and necessity or economy to the Government demands procurement by contract. Such contracts normally shall be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary materials (typewriter, paper, bindings, etc.). These contracts are subject to all the provisions of this subpart.

§ 22.210 Limitation on payment for personal services.

(a) Where the expert or consultant services being procured pursuant to 5 U.S.C. 3109 personal services, payment for the services of each expert or consultant shall not exceed the highest rate fixed by the Classification Act pay schedules for grade GS-15—or, in the case of professional engineering services primarily involving research and development or professional services involving physical or natural sciences or medicine, the highest rate payable to a GS-18. In addition, the contract may provide for such per diem and travel expenses as would be authorized for a Government

employee, including actual transportation and per diem in lieu of subsistence while the expert or consultant is traveling between his home or place of business and his official duty station.

§ 22.501-2 Procurements by purchase order.

Where no contract exists, such services shall be obtained by use of DD Form 1155 (Order for Supplies and Services/Request for Quotations) and DD Form 1155r "General Provisions" (see § 3.608 of this chapter), inserting in the Schedule the clauses prescribed in § 3.608-2(b)(1) (xii) of this chapter.

§ 22.501-5 Distribution of contracts.

(c) Headquarters, AFLC (MCASM), Wright-Patterson, AFB, Ohio 45433.

PART 23—SUBCONTRACTING POLICIES AND PROCEDURES

29. Sections 23.106-1 and 23.106-2 are revised, and in § 23.201-1, the introductory sentence of paragraph (a) and all of paragraph (d) are revised, as follows:

§ 23.106-1 Complete reports.

Promptly after review and evaluation by the CPSR Board, one copy of each complete report shall be provided to:

(a) ASD(I&L) Procurement Management Review, Office of the Assistant Secretary of Defense (I&L), The Pentagon, Washington, D.C. 20301;

(b) The cognizant Contract Audit Office; and

(c) The appropriate Military Department having cognizance of the plant as indicated below:

(1) Army: Chief, Procurement Management Review Division, Office of the Assistant Secretary of the Army (I&L), Washington, D.C. 20310;

(2) Navy: Deputy Chief of Naval Material (Procurement), Main Navy Building, Washington, D.C. 20360; or

(3) DSA: Defense Supply Agency, DCAS-AFS, Cameron Station, Alexandria, Va. 22314.

§ 23.106-2 Summary reports.

Three copies of each summary report (see SI-403) shall be sent to each purchasing office responsible for a current contract held by the contractor in excess of \$250,000, which requires consent to subcontracts. Copies should be furnished to other purchasing offices upon request. In addition, a summary report shall be furnished to each office provided a complete report. All summary reports, including those furnished on request, shall be supplemented to reflect significant changes occurring since preparation of the report. The contents of the summary report shall be divulged only to those Government personnel having a need-to-know.

§ 23.201-1 Clause entitled "Subcontracts" for fixed-price contracts.

(a) In fixed-price contracts (other than firm fixed-price or fixed-price with escalation having an estimated contract price of \$1 million or more and letter contracts contemplating any type of fixed-

price contract, the clause set forth below is required if:

(d) In exceptional circumstances and in letter contracts contemplating any type of fixed-price contracts, certain subcontracts or classes of subcontracts may be selected during negotiation for extraordinary Government surveillance. In such circumstances, insert the following as paragraph (g) of the foregoing clause.

(g) Notwithstanding approval of the procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer. (APRIL 1967)

PART 24—DISPOSITION OF PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

30. A new Part 24, titled as above, is added to this subchapter, to read as follows:

Sec.	
24.000	Scope and applicability of part.
24.001	Policy.
Subpart A—General	
24.101	Definitions.
24.101-1	Automatic release date (ARD).
24.101-2	Common item.
24.101-3	Contract auditor.
24.101-4	Contractor-acquired property.
24.101-5	Contractor inventory.
24.101-6	Demilitarization.
24.101-7	Departmental excess property.
24.101-8	Disbursing officer.
24.101-9	Government-furnished property.
24.101-10	Industrial plant equipment.
24.101-11	Inventory control point.
24.101-12	Line item.
24.101-13	Material.
24.101-14	Narcotics.
24.101-15	Personal property.
24.101-16	Plant clearance.
24.101-17	Plant clearance officer.
24.101-18	Plant clearance period.
24.101-19	Plant equipment.
24.101-20	Production scrap.
24.101-21	Public body.
24.101-22	Radioactive material.
24.101-23	Reportable property.
24.101-24	Reporting activity.
24.101-25	Salvage.
24.101-26	Scrap.
24.101-27	Screening completion date (SCD).
24.101-28	Service educational activity.
24.101-29	Serviceable or usable property.
24.101-30	Special tooling.
24.101-31	Special test equipment.
24.101-32	Surplus property.
24.101-33	Termination inventory.
24.102	Duties and responsibilities of plant clearance officer.
Subpart B—Methods of Disposal	
24.201	Disposal—general.
24.201-1	Priorities.
24.201-2	General restrictions on contractor's authority.
24.202	Contractor-acquired property—purchase or retention at cost, or return to suppliers.
24.202-1	Purchase or retention at cost.
24.202-2	Return of property to suppliers.
24.202-3	Cost-reimbursement type contracts.
24.203	Inventory schedules.
24.203-1	Submission of inventory schedules.
24.203-2	Separate schedules.
24.203-3	Inventory descriptions.

Sec.	
24.203-4	Inventory schedule certificate.
24.203-5	Common items.
24.203-6	Withdrawals from inventory schedules.
24.203-7	Acceptance of inventory schedules.
24.204	Scrap.
24.204-1	General.
24.204-2	Pre-inventory scrap determinations.
24.204-3	Segregation.
24.204-4	Contractor's approved scrap procedure.
24.204-5	Scrap warranty.
24.205	Screening of Contractor inventory.
24.205-1	General.
24.205-2	Procedure.
24.205-3	Procedures for industrial plant equipment.
24.205-4	Special screening procedures.
24.205-5	Waiver of screening requirements.
24.205-6	Local screening.
24.205-7	Procurement of packing, crating, and handling services.
24.205-8	Procedures for automatic data processing equipment (ADPE).
24.206	Sale of surplus contractor inventory.
24.206-1	General.
24.206-2	Competitive sales.
24.206-3	Negotiated sales.
24.206-4	Proceeds of sale.
24.206-5	Applicability of antitrust laws.
24.206-6	Foreign contractor inventory.
24.207	Donations.
24.208	Destruction or abandonment.
24.209	Removal and storage.
24.209-1	General.
24.209-2	Special storage at the risk of the contractor.
24.209-3	Special storage at the risk of the Government.
24.210	Property disposal determinations.
24.211	Review of property disposal.
24.211-1	Property disposal review boards.
24.211-2	Required review.
24.211-3	Additional review.
24.211-4	Responsibility of property disposal review board.
24.211-5	Documents required for review board action.
24.211-6	Review board records.
24.212	Subcontractor inventory.
24.212-1	General policy.
24.212-2	Inventory schedules.
24.212-3	Scrap.
24.213	Accounting for contractor inventory.

Subpart C—Forms, Instructions, and Reports

24.301	Forms.
24.301-1	Standard Form 97, Certificate of Release of a Motor Vehicle, and Standard Form 97A, Certificate of Release of a Motor Vehicle (Agency record copy).
24.301-2	Standard Form 120, Report of Excess Personal Property.
24.301-3	Standard Form 125, Report of Strategic and Critical Materials.
24.301-4	DD Form 1131, Cash Collection Voucher.
24.301-5	DD Form 1149, Requisition and Invoice Shipping Document.
24.301-6	DD Form 1342s, DoD Property Record Supplementary Data.
24.301-7	DD Form 1483, Shipping Document for GFM Turn-In.
24.301-8	DD Form 1640, Request for Plant Clearance.
24.301-9	DD Form 1636, Inventory Disposal Report.
24.301-10	DD Form 1638, Report of Excess and Surplus Contractor Inventory.

Sec.	
24.301-11	DD Form 1641, Disposal Determination/Approval.
24.301-12	DD Form 1639, Scrap Warranty.
24.301-13	DD Form 1642, Inventory Verification Survey.
24.301-14	DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory.
24.301-15	DD Form 1635, Plant Clearance Case Register.
24.301-16	DD Form 1637, Notice of Acceptance of Inventory.
24.302	Instructions.
24.302-1	Instructions for performing inventory verification and determination of allocability.
24.302-2	DD Form 1636, Inventory Disposal Report.
24.302-3	DD Form 1638, Report of Excess and Surplus Contractor Inventory.
24.302-4	Instructions for establishing a plant clearance case.
24.302-5	Instructions for assigning plant clearance case number.
24.302-6	Instructions for preparing standard Form 120, Report of Excess Personal Property.
24.302-7	Form letter for transmitting DD Form 1342s to DIPEC.
24.302-8	General sales terms and conditions and special conditions of sale.

AUTHORITY: The provisions of this Part 24 issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 24.000 Scope and applicability of part.

This part establishes uniform policies and procedures relating to the reporting, redistribution, and disposal of property which forms the basis of a claim against the Government, and other excess property when title is vested in the Government (see § 24.101-5). This part is not applicable to the disposal of real property or to property where the Government has a lien or title solely as a result of advance or progress payments when such payments have been liquidated.

§ 24.001 Policy.

It is the policy of the Department of Defense, notwithstanding the absence of any contractual provision relating to a plant clearance period, to effect plant clearance of property to which this part applies as quickly as possible, consistent with efficient operation. Disposition shall be effected with the view of achieving maximum economic reutilization of excess property or of obtaining the greatest possible return on the sale of surplus property.

Subpart A—General

§ 24.101 Definitions.

As used in this part, the following terms have the meaning stated below.

§ 24.101-1 Automatic release date (ARD).

"Automatic release date (ARD)" means the date on which screening for Federal utilization is completed and the property is determined not to be needed for any Federal use. The date signifies the transition from excess to surplus, but does not include the donation screening period.

§ 24.101-2 Common item.

"Common item" means material which is common in nature to the applicable Government contract and the contractor's other work.

§ 24.101-3 Contract auditor.

"Contract auditor" means the Defense Contract Audit Agency (DCAA) auditor assigned the responsibility for performing financial reviews and analyses requiring access to the contractor's records supporting cost data.

§ 24.101-4 Contractor-acquired property.

"Contractor-acquired property" means property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

§ 24.101-5 Contractor inventory.

"Contractor inventory" means:

(a) Any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and

(b) Any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

§ 24.101-6 Demilitarization.

"Demilitarization" means the act of destroying the military offensive or defensive characteristics inherent in certain types of equipment or material so as to prevent their further military or lethal use.

§ 24.101-7 Departmental excess property.

"Departmental excess property" means contractor inventory which has been determined to be excess to the procuring Department (and requiring Department, if that Department is not the procuring Department).

§ 24.101-8 Disbursing officer.

"Disbursing officer" means the officer or agent of the office designated as the paying office under the contract.

§ 24.101-9 Government-furnished property.

"Government furnished property" is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor.

§ 24.101-10 Industrial plant equipment.

"Industrial plant equipment" means that part of plant equipment with an acquisition cost of \$1,000 or more (see § 13.312 of this chapter).

§ 24.101-11 Inventory control point.

"Inventory control point" means an organizational unit within the supply system of a Department which is assigned the primary responsibility for the management of a group of items, either within a particular Department or for the Department of Defense.

§ 24.101-12 Line item.

"Line item" means a single line entry on a reporting form from any one contract at any one location which indicates a quantity of property having the same description and condition code.

§ 24.101-13 Material.

"Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

§ 24.101-14 Narcotics.

"Narcotics" means the following drugs or preparation thereof:

- (a) Opium, coca leaves, or cocaine;
- (b) Isonipocaine (demerol);
- (c) Marijuana (Cannabis Sativa L.);

or

(d) Any drug found by the Secretary of the Treasury and proclaimed by the President to have an addiction-forming or addiction sustaining liability similar to morphine or cocaine, such as methadon (dolophine, adonon) and nisentil.

§ 24.101-15 Personal property.

"Personal property" means property of any kind or any interest therein, except real property as defined in item 102.9, § 30.2 of this chapter and vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

§ 24.101-16 Plant clearance.

"Plant clearance" means all actions related to the screening, redistribution, and disposal of contractor inventory from a contractor's plant or work site. (Contractor's plant includes a Government facility when contractor-operated.)

§ 24.101-17 Plant clearance officer.

"Plant clearance officer" means the Government representative assigned the responsibility for plant clearance. He is an authorized representative of the contracting officer.

§ 24.101-18 Plant clearance period.

"Plant clearance period" means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 90 days after receipt by the termination contracting officer of acceptable inventory

schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the termination contracting officer and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

§ 24.101-19 Plant equipment.

"Plant equipment" means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

§ 24.101-20 Production scrap.

"Production scrap" means material generated as a scrap in the normal production processes having only a remelting or reprocessing value, including textile clippings, metal clippings, chippings, borings, turnings, and similar types of scrap, including faulty castings and forgings.

§ 24.101-21 Public body.

"Public body" means any State, territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

§ 24.101-22 Radioactive material.

"Radioactive material" means any item or material which is in itself radioactive or which is contaminated with radioactive material giving readings in excess of background radiation as measured on an instrument designed specifically for the type of radiation being emitted.

§ 24.101-23 Reportable property.

"Reportable property" means contractor inventory which must be reported or screening in accordance with this Section prior to disposal as surplus.

§ 24.101-24 Reporting activity.

"Reporting activity" means the Government activity which initiates Standard Form 120, Report of Excess Personal Property, or transmits DD Form 1342s, DoD Property Record Supplementary Data, to the Defense Industrial Plant Equipment Center (DIPEC).

§ 24.101-25 Salvage.

"Salvage" means property which because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property with-

out major repairs or alterations, but which has some value in excess of its scrap value.

§ 24.101-26 Scrap.

"Scrap" means property that no reasonable prospect of being sold except for the recovery value of its basic material content.

§ 24.101-27 Screening completion date (SCD).

"Screening Completion Date (SCD)" means that date on which all screening required by this part is to be completed, including screening within the Government and donation screening.

§ 24.101-28 Service educational activity.

"Service educational activity" means any educational activity designated by the Assistant Secretary of Defense (Manpower) as being of special interest to the Armed Services, such as Maritime Academies or Military, Naval, Air Force, Coast Guard preparatory schools.

§ 24.101-29 Serviceable or usable property.

"Serviceable or usable property" means property that has reasonable prospect of use of sale either in its existing form or after minor repairs or alterations.

§ 24.101-30 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

- (a) Consumable property;
- (b) Special test equipment; or
- (c) Building nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

§ 24.101-31 Special test equipment.

"Special test equipment" means electrical, electronic, hydraulic, pneumatic, mechanical or other items or assemblies of equipment which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment, but does not include:

- (a) Consumable property;
- (b) Special tooling; or
- (c) Buildings, nonseverable structures except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

§ 24.101-32 Surplus property.

"Surplus property" means contractor inventory not required within the Department of Defense or by other Federal agencies.

§ 24.101-33 Termination inventory.

"Termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, special test equipment, material, or special tooling which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined in §§ 24.101-4 and 24.101-9.

§ 24.102 Duties and responsibilities of plant clearance officer.

The plant clearance officer shall be responsible for:

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342s;

(c) Conducting or arranging for inventory verification and preparation of DD Form 1642, Inventory Verification Survey;

(d) Initiating prescribed screening and effecting resulting transfer and donation actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for effecting property disposal actions;

(h) Determining method of disposal;

(i) Surveillance of contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, inventory control manager, other federal agencies, or higher headquarters in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving method of sale, evaluating bids, and approving sale prices for contractor-conducted sales subject to any required review by the Property Disposal Review Board;

(m) Recommending the reasonableness of selling expenses on contractor-conducted sales;

(n) Securing anti-trust clearance, as required;

(o) Providing technical guidance and assistance to the Property Disposal Review Board when requested;

(p) Advising the contracting officer on all property disposal matters;

(q) Contracting for packing, crating and handling costs incident to the removal of Government property from the contractor's plants, when appointed a

contracting officer in accordance with Subpart D, Part 1 of this chapter;

(r) Employing, when appropriate, such services as may be available from the General Services Administration, the Defense Surplus Sales Offices, or the Defense Logistic Services Center.

Subpart B—Methods of Disposal**§ 24.201 Disposal—general.**

(a) Contractor inventory possessing military offensive or defensive characteristics, not required within the Department of Defense, shall be demilitarized by the contractor (or in unusual cases, by the purchaser, when authorized by the contracting officer) in accordance with Chapter XIV, Part 3, of DOD 4160.21 M, attachments 1 and 2.

(b) Contractor inventory classified by reason of military security, unless the classification is removed by proper authority, shall be disposed of in accordance with applicable security regulations or as otherwise directed by the contracting officer.

(c) Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

§ 24.201-1 Priorities.

Subject to the Government exercising its rights to require delivery of any items of contractor inventory to satisfy known Government requirements, contractor inventory shall be disposed of by the following methods in the priority indicated:

(a) Purchase or retention, by prime contractor or subcontractor, of contractor-acquired property at cost;

(b) Return of contractor-acquired property to suppliers;

(c) Utilization within the Government (through application of prescribed screening procedures);

(d) Donation to eligible donees;

(e) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor);

(f) Donation to public bodies in lieu of abandonment; or

(g) Abandonment or destruction.

§ 24.201-2 General restrictions on contractor's authority.

The following general restrictions are in addition to specific restrictions set forth in this subpart:

(a) The authority of a contractor to purchase, retain, or dispose of contractor inventory or to authorize or approve a purchase, retention, or disposition by a subcontractor is subject to:

(1) Any applicable Government restrictions on the disposition of property which is either classified by reason of military security or is dangerous to public health, safety or welfare, and

(2) Any contract provisions regarding the disposition;

(b) A contractor, when authorized to sell contractor inventory, shall not sell such inventory to persons known by him to be officers, enlisted personnel, or civilian employees of the Department of Defense;

(c) The authority of a contractor to approve a sale, purchase, or retention at less than cost, by a subcontractor, and the authority of a subcontractor to sell, purchase, or retain at less than cost, contractor inventory with the approval of the next higher-tier contractor does not include authority to approve:

(1) A sale by a subcontractor to the next higher-tier contractor or to an affiliate (see § 2.201(a)(23) of this chapter) of such contractor or of the subcontractor, or

(2) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

§ 24.202 Contractor-acquired property—purchase or retention at cost, or return to suppliers.**§ 24.202-1 Purchase or retention at cost.**

(a) Contractors shall be encouraged to purchase or retain contractor-acquired property at cost. No part of the cost of property so purchased or retained shall be included as a claim for reimbursement against the Government. Under cost-reimbursement type contracts, appropriate adjustments shall be made for previously reimbursed costs. When a contractor purchases or retains any allocable contractor-acquired property for use in other continuing Government contracts or commercial operations, handling and transportation charges necessitated by the purchase or retention of such property may be considered as allowable cost (included in contractor's settlement proposal as other costs in costs of termination): *Provided*, That such costs are reasonable.

(b) When property purchased or retained is for use on a continuing Government contract and is not in excess of the quantitative requirements for completion of that contract, that property shall be considered properly allocable to the continuing contract if that contract is subsequently terminated, even though its procurement would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on other Government contracts, the contractor terminates subcontracts under the other Government contracts, the charges incurred by reason of the termination of such subcontracts may be included as an allocable cost under the contract which generated excess property. When diversion of material in this manner is planned, a careful cost evaluation shall be made to assure that these costs are reasonable in comparison to the cost of property to be diverted.

§ 24.202-2 Return of property to suppliers.

Contractors are authorized and shall be encouraged to return allocable quantities of contractor-acquired property to suppliers for full credit less the supplier's normal restocking charge or 25

percent of cost, whichever is less. Contractors may be reimbursed for reasonable transportation, handling, and restocking charges with respect to the property so returned, but shall not be reimbursed for the cost of the property returned to suppliers in accordance with this section. Under cost-reimbursement type contracts, appropriate adjustments shall be made for previously reimbursed costs.

§ 24.202-3 Cost-reimbursement type contracts.

Under cost-reimbursement type contracts, property purchased or retained by the contractor or returned to suppliers, in accordance with §§ 24.202-1 and 24.202-2, shall not be reported on inventory schedules. Individual transaction approvals shall not be required, but such transactions shall be subject to review on a periodic basis by the administering activity in coordination with the contract auditor to assure that the Government's interest is fully protected.

§ 24.203 Inventory schedules.

§ 24.203-1 Submission of inventory schedules.

(a) Contractor inventory (see § 24.101-5) shall be reported by the contractor to the contract administration office on inventory schedules promptly after it is determined to be excess or at such later time as may be contractually authorized. Inventory schedules of subcontractors shall be processed in accordance with § 24.212. Contractor-acquired property purchased or retained pursuant to § 24.202 shall not be listed. Partial schedules may be submitted when they cover substantial portions of a particular property classification of excess inventory. Each schedule submitted shall be identified by the contractor as "partial" or "final." Submission shall not be delayed in order to supply complete cost data on items of work in process where data is not readily available.

(b) The contractor may submit machine listings of inventory, provided, that all essential elements of data for preparing inventory schedules as prescribed in this part and as outlined in DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory, are included thereon, and an appropriate signed DD inventory schedule form is submitted as a cover sheet.

(c) With respect to termination inventory reported in accordance with § 24.203-2, Government-furnished property and contractor-acquired property shall be grouped separately on the schedule, clearly identified as either Government-furnished or contractor-acquired, and subtotals provided for each group.

(d) Thirty copies of each inventory schedule listing serviceable and usable property requiring screening in accordance with this part, and five copies of each inventory schedule for property not requiring screening (see § 24.205-1(d)) shall be submitted to the plant clearance officer, unless a different quantity is prescribed by the plant clearance officer.

(e) Industrial Plant Equipment (IPE) (see § 13.312 of this chapter) shall be reported on DD Form 1342s, DoD Property Record Supplementary Data, and processed in accordance with § 24.205-3.

§ 24.203-2 Separate schedules.

(a) Separate sets of schedules shall be submitted on the forms illustrated in F-200.542 through F-200.545c and F-200.832 for serviceable or usable contractor inventory as follows:

- (1) Property having a line item acquisition cost of more than \$300; and
- (2) Property having a line item acquisition cost of \$300 or less.

(b) Contractor inventory having a line item acquisition cost of more than \$300 shall be grouped separately as follows:

- (1) Aeronautical material and equipment;
- (2) Electronic material and equipment;
- (3) Special test equipment; or
- (4) Other serviceable or usable property, excluding special tooling.

(c) Separate sets of schedules shall also be submitted for contractor inventory without regard to acquisition cost as follows:

- (1) Serviceable or usable special tooling;
- (2) Scrap;
- (3) Salvage; or
- (4) Property bearing a military security classification, regardless of condition or value.

(d) Grouping of property by the contractor shall be subject to the approval of the plant clearance officer.

§ 24.203-3 Inventory descriptions.

Inventory schedules submitted in accordance with §§ 24.203-1 and 24.203-2, shall be prepared in accordance with instructions prescribed in this part and as outlined by DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory. The contractor shall consult the plant clearance officer when in doubt as to the extent of description required. Inventory judged to be salvage shall be described in sufficient detail to reflect salvage potential.

§ 24.203-4 Inventory schedule certificate.

When termination inventory is reported on inventory schedules, the prime contractor, or the subcontractor having title to the property, shall execute the inventory schedule certificate. When contractor inventory, other than termination inventory, is reported on inventory schedules, the prime contractor shall execute the inventory schedule certificate, irrespective of the location of the property. The original and three copies or reproducible masters of each inventory schedule shall be signed by an authorized official of the contractor.

§ 24.203-5 Common items.

Except for property, delivery of which has been required by the Government, and except for Government-furnished property, under no circumstances shall the contractor's inventory schedules include any items reasonably usable on

other work of the contractor without loss to the contractor (see § 15.205-42 of this chapter).

§ 24.203-6 Withdrawals from inventory schedules.

If at any time prior to final disposition any items of contractor-acquired property listed in the contractor's inventory schedules becomes reasonably usable on other work of the contractor without loss to him and this fact is known to the contractor, he must purchase or retain such items at cost in accordance with § 24.202, and shall amend his inventory schedules and his claim accordingly. Upon notification to the plant clearance officer, the contractor may similarly purchase or retain at cost any other items of property included in his inventory schedules. Withdrawal of any Government-furnished property included in inventory schedules is subject to written approval by the plant clearance officer. If withdrawal occurs after screening has started, the plant clearance officer shall immediately notify the appropriate screening activity.

§ 24.203-7 Acceptance of inventory schedules.

(a) Upon receipt of inventory schedules from the contractor, the plant clearance officer shall review the schedules and determine their acceptability. If the schedules are acceptable, the plant clearance officer shall within 15 days execute and transmit to the contractor a DD Form 1637, Notice of Acceptance of Inventory. If any inventory schedule or DD Form 1342s is found to be inadequate, the plant clearance officer shall notify the contractor in writing of the deficiencies within 15 days of the receipt of such schedules. The contractor shall be required to correct or supplement the schedules or DD Form 1342s as to the items which are deficient. Inventory schedules shall not be rejected if the information contained therein is adequate for disposal purposes, even if complete cost data on work in process are not available. Rejection of an inventory schedule shall be limited when possible to specific items thereon and shall not necessarily render the entire schedule unacceptable. Should substantial errors develop which were not apparent from termination inventory schedules previously deemed acceptable, the final phase of a plant clearance period shall not commence until corrected schedules have been submitted, unless the plant clearance officer determines that no unwarranted delay in disposal operations was occasioned thereby.

(b) Verification of inventory: When property is reported excess by a contractor it is necessary that the interests of the Government be protected by assuring that property is physically, quantitatively, and technically allocable to the contract in question and cannot reasonably be diverted to other work of the contractor. The plant clearance officer, who is responsible for disposal of contractor inventory, is also responsible for the adequacy of allocability reviews. In carrying out this responsibility, the plant

clearance officer shall establish close coordination with and request the assistance of the contract auditor, quality assurance representative, production specialist, price analyst, property administrator, or other qualified personnel, as appropriate, when such assistance is necessary. It will be the plant clearance officer's responsibility to assure that adequate verification is accomplished to determine that:

- (1) Inventory is present at the location indicated;
- (2) It is allocable to the modified, completed or terminated contract or the terminated portion thereof;
- (3) Quantity and condition are correctly stated; and
- (4) The contractor has endeavored, where practicable, to divert to other work or to return contractor-acquired property to supplier for appropriate credit.

Verification may be performed by resident Government personnel prior to the formal submission of inventory schedules to the plant clearance officer. Screening prescribed in § 24.205 shall not be withheld after receipt of acceptable inventory schedules pending completion of inventory verification. The results of the verification shall be recorded on DD Form 1642, Inventory Verification Survey, in accordance with instructions for performing inventory verification set forth in § 24.302-1. A copy of the completed survey form shall be furnished the appropriate contracting officer. Upon completion of inventory verification, the plant clearance officer shall take immediate action to correct any discrepancies noted, including coordination with the contractor, contracting officer, or property administrator, and screening activities, as appropriate. When a controversy arises with respect to allocability, the contractor shall be required to substantiate his position with appropriate documentation which the plant clearance officer shall evaluate and forward to the contracting officer with his recommendations for decision.

§ 24.204 Scrap.

§ 24.204-1 General.

Scrap need not be itemized on inventory schedules if (a) the material is physically segregated in the contractor's plant, and (b) the contractor submits a statement describing the material generally, setting forth its approximate cost, and giving such other information as may be necessary for the plant clearance officer to determine whether the property is scrap. Promptly after the submission of inventory schedules, by the contractor, the plant clearance officer shall review, or cause to be reviewed the contractor's treatment of any items of contractor inventory as scrap. The review shall include a careful examination of the inventory schedules and, in appropriate cases, physical inspection of the property involved. Prior to authorizing disposal of items as scrap, the plant clearance officer shall obtain such approval as may be required by § 24.211.

§ 24.204-2 Pre-inventory scrap determinations.

The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys and approved, if required, pursuant to § 24.211. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvageable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

§ 24.204-3 Segregation.

Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from his other work and, in such cases, the scrap warranty required by § 24.204-5 may be waived at the discretion of the plant clearance officer.

§ 24.204-4 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this part. Production scrap, as defined in § 24.101-20, and production spoilage, may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken, mutilated, or otherwise rejected parts excess to overhaul and repair contracts, may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established nor shall approval in accordance with § 24.211 be required for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government-owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an

inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of this part.

(e) (1) Silver scrap and scrap items containing recoverable quantities of silver shall be reported by letter to the Supply Officer, Naval Ordnance Plant, Forest Park, Ill. 60130, for disposition instructions. Gold and platinum scrap and scrap items containing recoverable quantities of gold and platinum shall be shipped as follows:

(i) From contractors in the United States east of the Mississippi River, and in Puerto Rico, the Virgin Islands, and Atlantic overseas area, ship directly to the Property Disposal Officer, U.S. Naval Air Station, Lakehurst, N.J. 08733.

(ii) From contractors in the United States west of the Mississippi River (except Alaska, Hawaii, Washington, Oregon, California, Nevada, and the Pacific overseas area), ship directly to the Property Disposal Officer, Pueblo U.S. Army Depot, Pueblo, Colo. 81001.

(iii) From contractors in Alaska, Hawaii, Washington, Oregon, California, Nevada, and the Pacific overseas area, ship directly to the Property Disposal Officer, Naval Supply Center, Oakland, Calif. 94614.

(2) Precious metals shall be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers shall not be used.) Grindings or sweepings shall not be packaged in paper or wooden containers as loss occurs due to adhesion of particles. Containers shall be marked to show the type of precious metals contained therein.

(3) The shipping document shall indicate the net weight of each item to the nearest ounce (troy or avoirdupois). Shipment shall be made by the most economical means available, consistent with adequate safeguards to prevent loss or theft.

(4) Scrap metals, which are gold or silver plated, silver lined or clad, shall be disposed of through normal procedures. The sales return shall not be less than the scrap value of the precious metals contained therein.

§ 24.204-5 Scrap warranty.

(a) If contractor inventory is sold as scrap, including sale to the holding contractor, a scrap warranty in the form outlined in DD Form 1639, Scrap Warranty, shall be included as a special condition of sale, unless the requirement is waived pursuant to paragraph (d) of this section.

(b) The scrap warranty may be released on behalf of the Government by the administrative contracting officer (TCO for termination inventory), if, as consideration for the release, the Government is paid the difference between

(1) the price for which the material was sold as scrap, and (2) an amount not less than that which the material could reasonably be expected to bring if it were sold at a fair and reasonable price for purposes other than use as scrap. The release of the scrap warranty shall be given by the Government and the consideration paid to the Government, even though the contract containing the warranty was not made directly with the Government.

(c) In the event of resale of any material subject to a scrap warranty, the seller is required to obtain an appropriate scrap warranty from the purchaser. Upon tender of this warranty to the Government, the seller shall be released by the Government from liability under his own warranty.

(d) The scrap warranty requirement may be waived by the plant clearance officer in circumstances described in § 24.204-3 and whenever it can be clearly established that such a waiver would not adversely affect the Government's interest. A written justification supporting the waiver shall be prepared and placed in the case file.

§ 24.205 Screening of contractor inventory.

§ 24.205-1 General.

(a) To promote maximum utilization within the Government, serviceable or usable property included in the contractor's inventory schedules shall be screened prior to disposition by donation or sale. The plant clearance officer shall arrange, in such a manner as to avoid interruption of the contractor's operations, for physical inspection of such property at the contractor's plant if requested by prospective transferees. All transfers of property within the Department of Defense or other agencies of the Government shall be without reimbursement. Costs incident to transfers, including packing, crating, preparation for shipment, loading and transportation, which are not the responsibility of the contractor, shall be borne by the transferee. (Costs incident to the movement of industrial plant equipment to Defense Supply Agency storage sites shall be borne by the Department of Defense component transferring the equipment to DIPEC.)

(b) Except as set forth in paragraphs (c) and (d) of this section, screening, including a 15-day donation screening, shall be in accordance with §§ 24.205-2 and 24.205-3, and shall be completed within a 90-day period, beginning with the date the plant clearance officer receives acceptable inventory schedules from the contractor. This 90-day period is broken down into two segments. During the first through the 75th day, screening required by §§ 24.205-2 (a) and (b) and 24.205-3 (a), (b), and (c) is accomplished. The 75th day shall be designated as the automatic release date (ARD) by the plant clearance officer. Screening for the 76th through the 90th day required by §§ 24.205-2(c) and 24.205-3(d) completes the 90-day screening cycle. The full 90-day period shall be

designated as the Screening Completion Date (SCD). Plant clearance officers will designate two dates on all screening documents. The 75th day as the ARD and the 90th day as the SCD, neither of which shall be extended.

(c) Except for Government-furnished property, subcontractor termination inventory to which § 8.209-4 applies, is not subject to §§ 24.205-2 and 24.205-3.

(d) Unless otherwise indicated, the following categories of contractor inventory are exempt from the screening requirements of § 24.205-2.

(1) Unless the contracting officer determines in individual cases that screening of such property is desirable, serviceable or usable property with a line item acquisition cost of \$300 or less shall not be screened in accordance with § 24.205-2: *Provided*, Such property is reported on separate schedules, except that property of a type listed in paragraph (f) of this section shall be screened by the procuring and/or requiring Department in accordance with § 24.205-2(a); property should not be listed as separate line items (as defined in § 24.101-12) solely for the purpose of avoiding mandatory screening requirements. Further, when a contractor reports substantially similar items on an inventory schedule, but lists them as separate line items due to different property control identification or assembly numbers, serial numbers, minor variations in condition code or unit cost, or other insignificant or minor reasons, these items will be grouped on the schedule. If the cost of this group of items is more than \$300, they will be screened in accordance with § 24.205-2. The screening activity shall be informed as to reasons for screening items having an "apparent" line item value exempting them from screening;

(2) Scrap and salvage and property in condition codes N4, E4, O4, R3, and R4 which will not ordinarily be considered as serviceable or usable property;

(3) Serviceable or usable subcontractor termination inventory to which § 8.209-4 of this chapter applies, with the exception of DIPEC-controlled industrial plant equipment, to which § 24.205-3 applies;

(4) Work in process listed in DD Form 544 unless, due to the nature of the item or extent of build-up accomplished, the plant clearance officer determines that screening is desirable or necessary; and

(5) When the aggregate of all schedules to be reported by the contractor has an acquisition cost of \$2,500, or less and represents the total inventory to be reported under a specific claim or contract, unless determined necessary by the contracting officer.

(e) Listings of property exempt from formal screening in accordance with paragraph (d) of this section, with the exception of subparagraph (3), shall be maintained in a property screening file for a period of 30 days and made available for the first 15 days for selection by General Services Administration representatives for Federal utilization purposes, and for the second 15 days, for selection for donation purposes in

accordance with § 24.207. Items selected either for Federal utilization or donation may be disposed of in accordance with § 24.206 if shipping instructions are not received within 40 days after date of selection in the case of Federal utilization, or from the start of the donation screening period in the case of donation.

(f) The following categories of contractor inventory are subject to the screening requirements of § 24.205-2(a):

(1) Serviceable or usable special tooling;

(2) Serviceable or usable special test equipment (see § 24.205-4(b) for additional screening procedures);

(3) Items which the contract directs to be screened will be screened as provided by the terms of the contract, irrespective of line item dollar value or condition code;

(4) Items on which the plant clearance officer determines that screening is desirable. In this event, the screening activity will be provided complete and specific reasons for screening items normally exempt from screening; and

(5) Perishables, property bearing a military security classification, and property dangerous to public health or safety.

(g) Upon completion of screening in accordance with § 24.205-2(a), property cited in paragraph (f) of this section, with the exception of subparagraph (5), will be subject to the provisions of paragraph (e) of this section.

(h) Automatic data processing equipment, including that on lease in which the Government is entitled to rental benefits, shall be screened in accordance with § 24.205-8.

§ 24.205-2 Procedure.

(a) *First through 30th day.* Promptly upon receipt of acceptable inventory schedules from the contractor, serviceable or usable property shall be screened within the procuring Department (see § 5.1101-4 of this chapter) and the requiring Department (see § 5.1101-3 of this chapter) if such Department is not the procuring Department. The requiring Department shall have first priority for retention of listed items. Such screening shall be completed within 30 days or less. The schedules shall be transmitted with Standard Form 120, Report of Excess Personal Property, reflecting the ARD and SCD and appropriately identified as contractor inventory.

(b) *31st through the 75th day.* Four copies of the inventory schedules reflecting deletions of all retained items shall be mailed or otherwise delivered by the plant clearance officer to the General Services Administration regional office serving the region in which the property is located, not later than the 31st day from and including the day the acceptable schedules were received by the plant clearance officer. The schedules shall be transmitted with Standard Form 120, Report of Excess Personal Property, reflecting the ARD and SCD and appropriately identified as contractor inventory. At the time of transmittal to the General Services Administration,

information copies of the revised inventory schedules shall be forwarded to the other Departments whenever aeronautical or electronic material and equipment is involved. When requests for transfers are received from the procuring or requiring Department after the 31st day and prior to receipt of General Services Administration transfer order, the plant clearance officer shall immediately notify the General Services Administration Regional Office that the items have been withdrawn and are no longer available for General Services Administration screening. Notification shall include identification of the applicable Standard Form 120, the contractor's name, location, and contract number. The General Services Administration will prepare and issue circulars and catalogs to all agencies of the Government within the region. Property selected as a result of reviewing the General Services Administration circulars or catalogs will be requested from the General Services Administration Regional Office that issued the circular or catalog. Department of Defense activities requesting listed property will have priority on a "first come-first served" basis for such property through the 60th day. Thereafter, the General Services Administration will honor requests from any agency of the Government for transfer of property on a "first come-first served" basis. The General Services Administration will transmit approved orders and shipping instructions for property to be transferred to the Department of Defense activities from which it received the inventory schedules. Such orders and instructions shall be promptly honored and delivery authorized.

(c) *76th through 90th day.* During this period the General Services Administration will provide for the screening of all remaining property by eligible donees for possible donation (see § 24.207).

§ 24.205-3 Procedures for industrial plant equipment.

(a) *Reporting idle industrial plant equipment.* Industrial plant equipment, identified in § 13.312 of this chapter and having an acquisition cost of \$1,000 or more, shall be listed on a DD Form 1342s, DoD Property Record Supplementary Data (see item 306.1, § 30.2, and item 306.1, § 30.3 of this chapter and F-200.1342s). The DD Form 1342s shall be prepared by the contractor and submitted to the assigned Government property administrator for appropriate review and transmittal to the plant clearance officer. Upon receipt of acceptable DD Form 1342s, the plant clearance officer will designate the 75th day from that date as the ARD, with the 90th day from that date as the SCD. The ARD will be entered in block 60 of the DD Form 1342s and shall not be extended, except as provided in paragraph (e) of this section. The plant clearance officer shall insert the date of receipt into Item 58, Section III, of the DD Form 1342s. The plant clearance officer will forward two copies of the DD Form 1342s to the Defense Industrial Plant Equipment

Center, Memphis, Tenn. 38102, for all industrial plant equipment in condition codes other than "X." Condition code "X" industrial plant equipment shall be processed in accordance with § 24.205-1(e). The DD Form 1342s shall be forwarded to DIPEC within 48 hours after establishing the ARD. No other distribution of this form will be made by the plant clearance officer.

(b) *Screening—first through 30th day.* DIPEC shall screen excess industrial plant equipment against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. Industrial plant equipment excess to DIPEC requirements shall be reported by DIPEC to the Defense Logistic Services Center (DLSC) for screening. DLSC will include industrial plant equipment reported by DIPEC in Department of Defense excess lists prepared for circulation to activities designated by the Military Departments and to foreign countries and international organizations eligible for military assistance. DIPEC will issue to the plant clearance officer an appropriate DD Form 1149, Shipping Document (Movement Notice), containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected.

(c) *Screening—31st through 75th day.* On the 31st day, DLSC will forward, as appropriate, the excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. Requests received by DIPEC after the 31st day will be forwarded to DLSC which will advise the General Services Administration and request withdrawal. During the period from the 31st through the 75th day, the General Services Administration will honor requests from any agency of the Government on a "first come-first served" basis, and will forward the approved documents to DIPEC which will issue appropriate instructions and property movement orders to the plant clearance officer at the reporting activity.

(d) *Screening 76th through 90th day.* During this period the General Services Administration will provide for the screening of all remaining industrial plant equipment by the Department of Health, Education, and Welfare for possible donation. The General Services Administration will receive Department of Health, Education, and Welfare requests for industrial plant equipment and will forward approved transfer documents to DIPEC, which will issue appropriate instructions and property movement orders to the plant clearance officer at the reporting activity.

(e) *After 90th day.* If a Department of Defense requirement develops after the 90th day and the item is still available the item will be shipped against such requirement, unless the plant clearance officer has justified and compelling reasons for not making the shipment.

(f) Items of plant equipment with an acquisition cost of less than \$1,000, and items of plant equipment with an acquisition cost of more than \$1,000 not identified in § 13.312 of this chapter, shall not be reported to DIPEC but shall be reported and screened in accordance with §§ 24.205-24.205-8.

§ 24.205-4 Special screening procedures.

(a) *General.* For the special categories of property identified below, standard screening requirements in §§ 24.205-24.205-8 are superseded or modified by the procedure set forth for each category.

(b) *Standard components of special test equipment.* (1) Contractors reporting special test equipment for disposal which contain standard, general or multipurpose components will adequately describe the composite unit to clearly reflect its capability and will further list and describe, in sufficient detail to permit screening all such standard components which can be economically removed and reused.

(2) In the event the contractor has a continuing requirement for the standard components to meet other approved special test equipment or facilities requirements, he shall annotate the DD Form 545 to indicate his requirement for such standard components. Screening shall be accomplished in accordance with § 24.205-2(a) and the screening activity shall be requested to advise whether they have a requirement for the composite unit or any of the standard components which have not been annotated as being required by the contractor. If the composite unit is not required by the procuring or requiring department (see § 24.205-2(a)), the contractor shall have first priority for those standard components which have been approved for transfer by the administrative contracting officer.

(3) Standard components, except those categorized as industrial plant equipment, which have not been selected by the contractor or the procuring or requiring departments shall be screened in accordance with § 24.205-2(b). If the standard components are categorized as industrial plant equipment which can be economically removed and reused, and have not been annotated for retention by the contractor, DD Forms 1342s shall be prepared and submitted to the plant clearance officer concurrently with the DD Form 545. The plant clearance officer shall hold the DD Form 1342s in suspense until screening of the composite unit has been completed and if there are no requirements for the composite unit, the DD Forms 1342s will be submitted to DIPEC for screening as industrial plant equipment in accordance with § 24.205-3.

(4) Standard components shall not be removed from the composite unit until the requirements for the items have been established. If no requirements exist, the composite units shall be disposed of in accordance with §§ 24.206 and 24.207.

(5) Those items categorized as industrial plant equipment approved for transfer by the administrative contracting

officer to fill continuing facilities requirement, will be reported to DIPEC on DD Form 1342 under the procedures prescribed on the facilities reporting.

(c) *Nuclear materials.* (1) The possession, use, and transfer of certain nuclear materials are subject to the controls of the United States Atomic Energy Commission (AEC) pursuant to the Atomic Energy Act of 1954, as amended. The materials are:

(1) *By-product material.* Meaning any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material (see AEC Regulation 10 CFR, Part 30);

(2) *Source material meaning.* (i) Uranium, thorium, or any other material which is determined by AEC pursuant to the provisions of the Atomic Energy Act of 1954, as amended, to be source material, or

(ii) Ores containing one or more of the foregoing materials, in such concentration as the AEC may, by regulation, determine from time to time (see AEC Regulation 10 CFR Part 40); and

(3) *Special nuclear material meaning.* (i) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the AEC, pursuant to the provisions of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or (ii) Any material artificially enriched by any of the foregoing (see AEC Regulation 10 CFR Part 70).

(2) *Excess nuclear material in the categories described above shall be disposed of in accordance with instructions provided in the license agreement between the contractor in possession and the AEC. In the absence of specific instructions, excess materials described above shall be reported by letter to the U.S. Atomic Energy Commission, Washington, D.C. 20545. The nature of the material, quantity, location, and ownership shall be indicated.*

(d) *Strategic and critical materials.* Subject to the minimum quantity requirements set forth below, all strategic and critical materials listed, when determined to be excess as the result of screening in accordance with §§ 24.205-2(a), shall be reported by the holding agency to the Property Management and Disposal Service (PMDS), General Services Administration, Washington, D.C. 20405, which will determine whether they shall be transferred to the General Services Administration for stockpiling:

(1) Upon determination that the materials are excess, the holding agency shall notify the PMDS by letter showing the location and quantity and describing the material in sufficient detail as to chemical or other composition, specification, size, etc., to indicate the nature of each strategic material (complete purchase specifications or material content analyses shall be included whenever available); and

(2) The General Services Administration shall review the notification letter from the holding agency and, if the

General Services Administration decides that the material appears to conform to stockpile requirements and is needed for stockpile objectives, it shall furnish the holding agency with complete reporting instructions, pursuant to which the holding agency shall submit a report on Standard Form 125, Report of Strategic and Critical Materials.

Materials	Types, grades, or forms to be reported	Minimum quantity at one location to be reported
Asbestos.....	Chrysotile fiber.....	2,000 pounds.
Copper.....	Electrolytic cathodes.	Any quantity.
	Electrolytic wire bars.	Any quantity.
	Lake copper ingot bars.	Any quantity.
	Fire refined copper ingot bars.	Any quantity.
	Oxygen-free, high conductivity.	2,000 pounds.
Corundum.....	Natural crystal.....	2,000 pounds.
Ferrochromium-silicon.....	Metal alloy.....	Any quantity.
Ferrocolumbium.....	Alloy.....	Any quantity.
Ferrotungsten.....	Metal.....	Any quantity.
Fluorspar.....	Metallurgical grade, ores or concentrates.	20 short tons.
Iridium.....	Metal.....	Any quantity.
Jewel bearings.....	As determined by GSA.	Any quantity.
Mica.....	Muscovite film, 1st and 2d qualities.	100 pounds.
Morphine.....	Sulphate.....	Any quantity.
Palladium.....	Metal.....	Any quantity.
Quinidine.....	Powder.....	100 ounces.
Quinine.....	Sulphate.....	100 ounces.
Rutile.....	Ore.....	Any quantity.
Sapphire and Ruby.....	Boule.....	2,500 carats.
Silicomanganese.....	Low, medium, or high carbon.	2,000 pounds.
Tantalum metal.....	Capacitor grade—powder or ingot.	Any quantity.
Thorium oxide.....	Powder.....	Any quantity.
Titanium.....	Sponge.....	Any quantity.
Tungsten metal.....	Hydrogen reduced powder.	Any quantity.
Tungsten carbide-crystalline.....	Powder.....	Any quantity.
Tungsten carbide powder.....	Powder.....	Any quantity.

Less than minimum quantities of strategic and critical materials shall be screened in accordance with the provisions of § 24.205-2.

(e) *Printing equipment.* Printing equipment determined to be excess to a contract shall be reported for screening in accordance with § 24.205-2. It shall be the responsibility of the procuring or requiring Military Department to report all printing equipment excess to its requirements to the Congressional Joint Committee on Printing within the screening period defined in § 24.205-2(a). If no requirements exist, the reporting activity shall submit the listing of printing equipment to the General Services Administration for further utilization screening in accordance with § 24.205-2 (b).

(f) *Motor vehicles.* When reporting vehicles assigned to Federal Supply Groups 23, 24, and 38 for screening pursuant to § 24.205-2, the estimated one-time cost of repairs (parts and labor) will be inserted in block 18b and used to assign a condition code for insertion in block 18c of Standard Form 120.

(g) *Contractor inventory of civilian agencies.* Contractor inventory (including industrial plant equipment) excess to

Federal civilian agency contracts being administered by the Department of Defense shall be reported by the plant clearance officer to the owning civilian agency for the first 30 days for a determination of requirements. Inventory not required by the civilian agency shall then be reported to the applicable General Services Administration Regional Office in accordance with § 24.205-2 (b).

§ 24.205-5 Waiver of screening requirements.

An exception from screening requirements with respect to departmental excess contractor inventory may be made or authorized at the departmental headquarters of the administering activity, provided:

(a) Compelling circumstances clearly in the best interest of the Government justify an exception; and

(b) A written notice at the Department level, including determinations and findings, of the proposed exception is furnished to the Administrator of General Services Administration and to the Defense Supply Agency, if plant equipment within the scope of DIPEC is involved. This written notice shall be prepared by the Department and submitted to the General Services Administration and the Defense Supply Agency, when required, ten days in advance of the effective date of the exception.

§ 24.205-6 Local screening.

Except for classified property or property which is dangerous to public health, contractor inventory which is exempt from formal screening requirements (see § 24.205-1(d)), subject to departmental screening only (see § 24.205-1(f)), or contractor inventory which is residual to other required screening, may be subjected to local screening for a period of 15 days prior to the donation screening period provided in § 24.207(d) and prior to disposition by sale or abandonment. If duplicate requirements are received, Government activities will have precedence. The feasibility or extent of local area screening shall be determined by the plant clearance officer, based on considerations of quantity, condition and value of the property, and the estimated cost of effecting transfer.

§ 24.205-7 Procurement of packing, crating, and handling services.

The contract administration office shall be responsible for the procurement of packing, crating, and handling services. To accelerate plant clearance, appropriate data must be furnished by the transferee and shall be cited in the transfer or shipping document. The document shall not be forwarded to the contract administration office unless the required packing, crating, and handling funding data are furnished. Prior to procurement of packing, crating, and handling services, the contracting officer shall assure that the method employed is economical and in the best interests of the Government. Costs incident to the movement of industrial plant equipment to Defense Supply Agency storage sites

shall be borne by the owning Department of Defense component transferring the equipment to DIPEC (§ 24.205-1(a)). Use of van-type shipments shall be explored as an additional means for savings resulting from reduction in packaging requirement and/or cost differential for shipment by van versus other methods of shipment.

§ 24.205-8 Procedures for automatic data processing equipment (ADPE).

(a) Those items of ADPE as defined in § 1.201-29 of this chapter (regardless of FSC) which are Government-owned or which are leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Defense Supply Agency, Attention: DSAH-LSR, Cameron Station, Alexandria, Va. 22314, on Standard Form 120, "Report of Excess Personal Property" (original and four copies). Normally the time required for acquisition studies required to select replacement equipment makes it possible to project the anticipated release date 180 days before the equipment is available for transfer. ADPE should be reported as soon as it is possible to project the release date. The following minimum reporting schedule shall, however, apply.

(1) Government-owned ADPE will be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. The release date assigned will be the last day of the plant clearance period or 90 days after the property becomes inactive. In the event of changes in release date, revised reports will be submitted.

(2) Leased ADPE, the total cost of which is charged to one or more cost-reimbursement type contracts, will be reported when it is determined that the property will no longer be needed on the contracts, or a major portion thereof. To preclude unnecessary lease costs, the release date established shall not extend ADPE on rental beyond the date it can be released to the lessor. Prompt reporting of leased ADPE is necessary in order to afford an opportunity to reutilize the property and protect the Government's equity.

(b) With respect to leased equipment, the total cost of which is charged to one or more cost-reimbursement type contracts, a quotation shall be requested from the lessor projecting the reduced price at which the equipment may be purchased based on accumulated rental credits through the anticipated release date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information. If it is not available at that time, it should be provided when received.

(c) The following information will be reported on Standard Form 120:

(1) A complete list of each equipment item, identified by manufacturer's series

and model number, and modifications and attachments applied to each component, including identification number if Government-owned; indicate type of maintenance contract, contractor, and monthly cost;

(2) A separate attachment, showing the time in service for each component, average utilization (hours per month) and average downtime per month for the 12-month period immediately preceding the report (if appropriate, a narrative description of any history of repeated equipment failure shall be included);

(3) A list of compilers and other software packages (such as executive routines), engineering drawings and maintenance manuals available with the equipment; and

(4) In the instances of a complete equipment configuration, information regarding power and air conditioning requirements.

(d) The Defense Supply Agency shall control ADPE reported excess. Shipments shall be made upon receipt of requests approved by DSA.

§ 24.206 Sale of surplus contractor inventory.

§ 24.206-1 General.

(a) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this part. The contractor is required to use his best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(b) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under § 24.205, or retained at cost pursuant to § 24.202, shall be sold in accordance with § 24.206-2 at any time after notification by the plant clearance officer that screening has been accomplished. Any such purchase, retention, or sale shall be subject to the approval of the plant clearance officer. (See § 24.211 as to review by the Property Disposal Review Boards.)

(c) Description of property: Description of property must be adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(d) Condition: Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, i.e., "well preserved," "some surface rust," "repairs required," etc. Condition codes shall not be used. Because of its non-specific meaning to

the trade, the term "salvage" risks downgrading of the property in the bidder's viewpoint and shall not be used.

(e) Lotting shall be in accordance with the following:

(1) Unused items shall be lotted by make or manufacturer, except when quantities or dollar values are small;

(2) Commercially similar items shall be lotted together when practicable;

(3) Used and unused items shall be lotted separately, unless the quantity, value, or nature is such that it is uneconomical to sell separately;

(4) Within the bounds of economical considerations, the size of lots shall be influenced by an effort to encourage bidding by small businesses or individuals;

(5) No lot shall be so small that the administrative cost of selling will be disproportionate to the anticipated proceeds;

(6) An alternate bid for groups of items or for the entire offering may be solicited by use of an additional item described as follows:

Item ----- (alternate bid).
This item consists of all property listed and described in Items ----- to -----, inclusive. Award under this item may be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items ----- to -----, inclusive.

(f) Basis of sale shall be:

(1) *Unit price basis.* Items offered for sale shall require the bid price to be stated in terms of the quantity or weight generally applied by industry in the commercial sale of such items.

(2) *Lot price basis.* When a sales offering is made on a lot price basis, bids shall be requested only for the entire lot. Use of the lot price basis shall be held to a minimum, since it precludes adjustments. The lot price basis shall be used only when property cannot be sold by unit measure or the potential monetary recovery is small.

(g) *Format of invitation:* In large sales, a summary list of items offered shall be set forth and used as an item bid sheet, with detailed item descriptions on attached sheets.

(h) *Bidder's lists:* The plant clearance officer shall assure that commodity bidder's lists sufficient to obtain adequate competition in the sale of contractor inventory are maintained. The plant clearance officer may obtain additional listings, as required from the Defense Surplus Bidder's Control Office (DSBCO), 50 North Washington Street, Battle Creek, Mich. 49016. Use of listings maintained by DSBCO is encouraged when extremely large quantities of property, special commodities, or unusual geographic location is involved.

(i) *Auction, spot bid, and retail sales:* Auction, spot bid, and retail sales shall not be utilized for selling contractor inventory, unless approved on an individual case basis by the departmental headquarters of the administering activity.

(j) *Market impact:* Contracting Officers or plant clearance officers shall submit data to DLSC relative to the proposed sale of machine tools of any one

type on hand at any single location in minimum condition N3, E1, or O1 with a total acquisition cost exceeding \$250,000. Sales data shall include the Plant Equipment Code (PEC) number, noun description, quantity, location of property, and the proposed method of sale. DLSC shall advise the contracting officer or plant clearance officer within five working days whether or not sale proposal is approved. Priority for sales approval shall be given in those instances where plant clearance or other expedited actions are involved.

§ 24.206-2 Competitive sales.

(a) *General.* Surplus contractor inventory shall be offered for sale on a competitive basis except as provided in § 24.206-3. To the extent feasible, sub-contractors and suppliers should be solicited when additional competition is likely to result. The plant clearance officer shall provide the contractor with instructions relative to the method of soliciting bids and the basis for offering the property for sale (i.e., servicable or scrap). The contractor's overall program, including all forms and procedures, shall be evaluated by the plant clearance officer and shall be subject to his surveillance. To the extent necessary, the plant clearance officer may reserve the right to approve individual sales offerings prior to distribution.

(b) *Solicitation of bids.* Contractors shall solicit bids by formal invitations, unless informal bid procedures have been approved by the plant clearance officer as provided in subparagraph (2) of this paragraph:

(1) *Formal bid procedures.* (i) Bids shall be solicited a minimum of 15 calendar days in advance of the opening of bids to allow bidders an adequate opportunity to inspect the property and prepare and formally submit bids;

(ii) Invitations shall be circulated to a sufficient number of prospective bidders to assure wide competition, including the original suppliers and those prospective bidders designated by the plant clearance officer and the contractor;

(iii) In addition to mailing or delivering a notice of the proposed sale to all prospective bidders, the contractor may supplement this sales method by—

(a) Displaying a notice of the proposed sale in appropriate public places;

(b) Displaying a notice of the proposed sale in appropriate trade journals or magazines, or

(c) Publishing a notice of the proposed sale in a newspaper of general circulation in the locality in which the property is located, when the results of such paid commercial advertising is expected to justify the additional expenses involved.

(iv) When the acquisition cost of property to be sold at one time, at one place, is \$250,000 or more, notice of each such proposed sale shall be transmitted to the U.S. Department of Commerce, Room 1300, 433 West Van Buren Street, Chicago, Ill. 60607. The notice shall be sent at as early a date as possible in ad-

vance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. Such notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing direct from the text so transmitted without editing or condensing. Double space lines will be used to describe each sales action; and the length of the line should be approximately 65, but not to exceed 69 character spaces and will contain the following information in the order listed: the name and address of the contractor who will issue the invitation; the name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained; a description of the property to be sold; when deemed desirable, the total estimated acquisition cost; the number of the invitation or sale; the date of the sale or bid opening, the types of sale, i.e., sealed bid, spot bid, or auction; and the location(s) of the property. The utmost care should be exercised in describing the types of property to be sold in order to assure interest by the maximum number of potential buyers but, at the same time, condense the information so that minimum space in the Department of Commerce publication will be required for printing. Where the acquisition cost is less than \$250,000, such notice may be transmitted, when considered desirable, in accordance with the procedures prescribed above.

(2) *Informal bid procedures.* When the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale or other special circumstances are present, invitations to bid may, with the approval of the plant clearance officer, be issued orally, by telephone or by other informal media, so long as the element of competition is maintained and each such sale is fully documented to include a record of solicitations and written confirmation of informal bids. Any bid by the contractor or his employees shall be submitted to the plant clearance officer prior to solicitation of bids by the contractor from other prospective bidders.

(c) *Formal invitations.* Sale by formal invitation shall include as a minimum general sale terms and conditions provided in § 24.302-8(a), and when necessary, special conditions in § 24.302-8(b). The plant clearance officer or his representative shall be present to witness bid openings. Within two working days after bid opening, the contractor shall submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative. All awards shall be subject to the approval of the plant clearance officer as indicated in paragraph (e) of this section.

(d) *Bid reservations.* All invitations for bid shall reserve the right to reject any or all bids and shall require payment of the full purchase price prior to delivery of the property to the purchaser.

(e) *Approval of sale.* Bids shall be evaluated by the plant clearance officer to establish that the sale price is fair and

reasonable in the light of reasonable knowledge or test of the market, due regard being given to current prices for products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the property. Award shall be approved to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who would not be eligible to enter into a sales contract with the Department of Defense in accordance with the provisions of the Joint Consolidated List of Debarred, Ineligible and Suspended Contractors (see § 1.600 of this chapter). If it is determined that an award to a contractor on a Joint Consolidated List would be in the best interest of the Government, the plant clearance officer shall request approval from the departmental headquarters of the administering activity. Current market appraisal or price received may be obtained from DLSC upon request.

(f) *Award by contractor.* The plant clearance officer shall notify the contractor of the bidder to whom an award shall be made (1) within five working days if Property Disposal Review Board approval is not required, and (2) within two working days after receipt of the Board decision if Property Disposal Review Board approval is required in accordance with § 24.211. The contractor shall make the award, collect the proceeds of sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

§ 24.206-3 Negotiated sales.

Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the plant clearance officer determines that the use of this method of sale is essential to expeditious plant clearance, or is otherwise justified on the basis of circumstances enumerated below: *Provided*, That the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the property was offered for competitive sale. Specific conditions justifying negotiated sales are:

(a) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(b) When no acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(c) When property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(d) When the disposal will be to states, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(e) When the specialized nature and limited use potential of the property would create negligible bidder interest;

(f) When removal of the property would result in a significant reduction in value, or the accrual of disproportionate expenses in handling; or

(g) When it can be clearly established that such action is essential to the Government's interests.

§ 24.206-4 Proceeds of sale.

(a) When payments are due the contractor under the applicable contract, and unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or applied in the manner directed by the contracting officer. The plant clearance officer will maintain an open suspense record until he has verified that credit has in fact been applied unless another Government representative has specifically assumed this responsibility.

(b) Proceeds from contractor-conducted sales which have not been credited as provided in paragraph (a) of this chapter shall be collected by the contractor and remitted to the plant clearance officer.

(c) All proceeds of sale remitted to the plant clearance officer shall be delivered to the designated disbursing officer by means of DD Form 1131, Cash Collection Voucher, within two working days after receipt. Transmittals shall identify the procurement contract by number and name of the contractor to assure that proceeds are properly credited, or where appropriate, deposited in Miscellaneous Receipts of the Treasury.

§ 24.206-5 Applicability of antitrust laws.

When contractor inventory with an acquisition cost of \$3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interests, the Department concerned shall promptly notify the Attorney General and the Administrator of the General Services Administration of the proposed disposal and the probable terms or conditions thereof. Prior to approving or effecting the proposed disposition, the plant clearance officer shall obtain antitrust clearance by transmitting the following information relative to the proposed sale through departmental channels of the administering activity for submission by that activity to the Department of Justice and the General Services Administration:

(a) Location and description of property (specifying the tonnage, if scrap);

(b) Proposed sale price of property (explaining the circumstances if proposed purchaser was not highest bidder);

(c) Acquisition cost of property to Government;

(d) Manner of sale, indicating whether by—

(1) Sealed bid (specifying number of purchasers solicited and bids received),

(2) Auction or spot bid (stating how sale was advertised), or

(3) Negotiation (explaining why property was not offered for sale by competitive bid);

(e) Proposed purchaser's name, address, and trade name (if any), under which he is doing business;

(f) If a corporation, give name of State and date of incorporation, and name and address of—

(1) Each holder of 25 percent or more of the corporate stock,

(2) Each subsidiary, and

(3) Each company under common control with proposed purchaser;

(g) If a partnership, give—

(1) Name and address of each partner, and

(2) Other business connections of each partner;

(h) Nature of proposed purchaser's business, indicating whether its scope is local, statewide, regional, or national;

(i) Estimated dollar sales volume of proposed purchaser (as of latest calendar or fiscal year);

(j) Estimated net worth of proposed purchaser; and

(k) Proposed purchaser's intended use of property.

Disposition shall be withheld pending receipt of advice from the Attorney General as to whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made. When property with a total acquisition cost of \$3 million or more is offered for sale on a competitive bid basis, the condition of sale specified in § 24.302-8(b)(8) shall be included in the invitation for bid. When the sale is not competitive, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General. The purchaser on either a competitive or noncompetitive sale shall be required to complete a questionnaire, providing the information outlined in paragraphs (e) through (k) of this section.

§ 24.206-6 Foreign contractor inventory.

(a) To prevent diversion, transshipment, or re-export of contractor inventory located in foreign countries to prohibited destinations (as listed in § 6.401-2 of this chapter) and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory by the contractor, including sales to foreign governments, shall be made in accordance with paragraphs (b) and (c) of this section.

(b) Sales contracts or other documents for passing title to foreign contractor inventory shall contain the following certificate.

The Purchaser certifies that the property covered by this contract will be used in (insert name of country). In the event resale or export is to be effected by the Purchaser of any of the property, acquired at a price in

excess of One Thousand United States Dollars (\$1,000) or its equivalent in other currency at the official rate of exchange, the Purchaser agrees to obtain the approval of _____ (insert name and address of Property Disposal Contracting Office). (FEBRUARY 1968.)

(c) The property disposal (contracting) officer shall approve sales contracts and requests for approval of resales or exports only if:

(1) The proposed purchaser's name does not appear on a consolidated list of ineligible, debarred and suspended bidders, and

(2) If the sales contract contains a provision prohibiting exports by purchasers and subpurchasers to communist areas (as listed in § 6.401-2 of this chapter).

(d) Any disposals of foreign contractor inventory by the U.S. Government, as distinguished from disposal by a contractor, shall be in accordance with the security trade control regulation on foreign excess sales, and regulations dealing with integrity and reliability checks.

(e) Generally, disposal activities of the Military Departments shall be utilized to accomplish the disposition of surplus contractor inventory located in foreign countries except Canada. Contractor-conducted sales may be authorized, provided the interests of the Government are adequately protected.

§ 24.207 Donations.

(a) Property may be donated only after it has been determined to be surplus following appropriate utilization screening, as provided in this section. The donation of surplus property to an authorized donee is subordinate to any need for property by a Federal agency, but takes precedence over sale (after screening), destruction, or abandonment. Surplus property which has been made available for donation and is not frozen within the donation screening period is not subject to donation after such property has been recorded on a sales offering in the final format.

(b) Classification of eligible donees in order of precedence and approval requirements are:

(1) For property schedules transmitted to GSA—

(i) *Public airports.* Donations approved during the first 5 days of the donation screening period. State or local public airport donations require approval of an appropriate Official of the Federal Aviation Administration, Department of Transportation, and GSA.

(ii) *Service educational activities (SEA).* Donations approved during the second 5 days of the donation screening period. Approval required of their national headquarters and GSA.

(iii) *Educational, public health, and civil defense institutions and organizations.* Donations approved on a first-come, first-served basis with public airports and SEAs, during the last 5 days of the donation screening period. The Department of Health, Education, and Welfare has the over-all responsibility for selecting property determined

to be usable and necessary for educational, public health and civil defense purposes, including research for any such purposes. Surplus property is screened and distributed for educational, public health, and civil defense purposes by State Agencies for Surplus Property (SASP). Approval of GSA is required.

(2) For property screened in accordance with § 24.205-1(c), public airports, SEAs, and SASP screen and select property for donation approval by GSA on a first-come, first-served basis.

(3) Public bodies: Surplus property may be donated to public bodies in lieu of destruction or abandonment in accordance with § 24.208(c).

(c) In addition to the activities indicated in paragraph (b) of this section, the Secretary of a Military Department or the Director of the Defense Supply Agency may donate, without expense to the United States, certain material not needed by the Department of Defense to (1) veterans' organizations, (2) soldiers' monument associations, (3) state museums, and (4) incorporated museums operated and maintained only for educational purposes, whose charter denies them the right to operate for profit. For guidance as to limitations and requirements for donation to these activities, see Chapter III, Part 3, DoD 4160.21 M.

(d) The General Services Administration will arrange for donation screening during the last 15 days of the 90-day screening period for serviceable property, as provided by §§ 24.205-2(c) and 24.205-3(d). For property not formally screened with the General Services Administration, see § 24.205-1(e). During this period, the plant clearance officer shall maintain applicable inventory schedules in a donable property file, which shall be made available for screening by eligible donees. Donees have the responsibility for notifying the plant clearance officer of items selected for donation and for initiating request for approval to the appropriate General Services Administration Regional Office.

(e) At the expiration of the 15-day donation screening period, items which have not been selected for donation shall be disposed of by sale, or when warranted, abandoned or destroyed. Items which have been selected for donation shall not be disposed of for a period not to exceed 40 days from the start of the donation screening period. Release of the property to eligible donees shall be authorized by the plant clearance officer immediately upon receipt of General Services Administration approval and appropriate shipping instructions. If approval and shipping instructions, including provision for payment of all costs incident to donation, are not received within the 40 day period, the property shall be disposed of otherwise as surplus.

(f) All costs for which the Government is responsible, incident to donation, shall be borne by the donee. Questions concerning the reasonableness of such costs to be borne by the donee shall be referred to the plant clearance officer for appropriate action. The plant clear-

ance officer may utilize the services of qualified Government technical personnel to ascertain the reasonableness of cost quotations for packing, handling, crating, and preparation of items for shipment.

(g) Property required for Government use may be withdrawn at any time prior to shipment or delivery to a donee.

(h) To assist the Department of Health, Education, and Welfare (DHEW) in locating property which is available for donation, each Military Department and the Defense Supply Agency shall furnish DHEW with a directory of activities where donable property files are maintained and may be reviewed.

§ 24.208 Destruction or abandonment.

(a) Surplus property which is not otherwise disposed of under this part may be destroyed or abandoned: *Provided*, That the plant clearance officer has determined in writing that:

(1) It has no commercial value and no value to the Government;

(2) The estimated cost of its care and handling is greater than the probable sale price; or

(3) Because of its nature it constitutes a danger to public health, safety, or welfare.

These determinations may be subject to review in accordance with Property Disposal Review Board requirements (see § 24.211).

(b) Except to the extent permitted by provisions of the contract, no contractor inventory shall be abandoned in the contractor's premises without the contractor's written consent.

(c) Surplus property as to which a determination has been made pursuant to paragraph (a) of this section may be donated to public bodies in lieu of abandonment or destruction. All costs incident to donation shall be borne by the donee.

§ 24.209 Removal and storage.

§ 24.209-1 General.

Contractor inventory shall be removed from the contractor's premises as expeditiously as possible to facilitate clearance of the contractor's plant or work area and to preclude the possibility of incurring storage expenses.

§ 24.209-2 Special storage at the risk of the contractor.

When the contractor finds it necessary to remove property from his premises prior to completion of disposal action, or prior to completion of disposal action, or prior to expiration of the plant clearance period in the case of a termination, he may, upon written notice to the plant clearance officer, store any items of inventory not previously disposed of in a warehouse or other storage location on or off his own premises, unless otherwise directed by the plant clearance officer within 10 days of the receipt of such notice by the plant clearance officer. Such storage shall in no way modify the responsibility of the contractor with respect to such property. The expense of such storage, including any

cost incident to the transportation to and from the storage area, shall be borne by the contractor and shall not be charged directly or indirectly to Government contracts, unless the contracting officer determines that such expense is for the convenience of the Government.

§ 24.209-3 Special storage at the expense and risk of the Government.

(a) Contractor inventory will be stored only when a determination is made by the departmental purchasing office or the inventory control point that contractor inventory should be retained in storage for future anticipated use. When the Department purchasing office or the inventory control point determines that contractor inventory should be stored, they shall advise the plant clearance officer of:

- (1) Specific items to be stored;
- (2) Reason for retention;
- (3) Period of time contractor inventory should be retained in storage; and
- (4) Office responsible for authorizing retention.

(b) At any time after expiration of the plant clearance period (see § 24.101-18), the contractor may submit to the contracting officer, a list certified as to quantity and quality, of any items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the contracting officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government shall accept title to such items and remove them or enter into a written storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the contracting officer upon removal of the items (of if the items are stored, within 45 days from the date of submission of the list). Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) Upon receipt of request to store contractor inventory as provided in paragraph (a) of this section, the plant clearance officer shall request the responsible purchasing office or the purchasing office of the activity authorizing storage to execute a storage agreement. The request shall include the following data:

(1) Copy of the Departmental purchasing offices or inventory control points request for storage;

(2) Contractor's request for storage, together with statement as to Government's obligation to store inventory;

(3) Inventory of property to be stored;

(4) Storage space required (actual or estimated);

(5) Storage period (actual or estimated); and

(6) Cost (actual or estimated), if cost to the Government will be involved, or statement that contractor will execute a no-cost storage agreement. (Storage agreements for contractor inventory will be executed on a no-cost basis whenever possible.)

(d) If the holding contractor will not agree to store the property, and removal from the contractor's premises is necessary, the plant clearance officer shall ascertain the availability of Government and/or commercial storage facilities and shall provide the purchasing office of the activity authorizing storage with the following data in addition to that required in paragraph (c) of this section:

(1) Information as to the availability of Government and/or commercial storage facilities;

(2) Services which will be performed (e.g., packing, crating, shipping);

(3) Estimated expense of storage and services if stored in commercial facilities, together with any bids available; and

(4) Any other pertinent information, including the plant clearance officer's recommendation.

(e) Contract will be executed in accordance with established procurement procedures and will reflect the activity directing storage of the inventory involved. Two months prior to expiration of the storage contract, the field contract administration activity shall contact the activity for which the inventory was stored to determine whether the inventory should be retained for an additional period, or disposed of according to plant clearance procedures.

§ 24.210 Property disposal determinations.

Written determinations supporting disposal actions in the following categories shall be made and placed in the plant clearance case file:

(a) Salvage determination;

(b) Scrap determinations (not required for production scrap);

(c) Abandonment and/or destruction determinations;

(d) Disposal by noncompetitive sale; and

(e) Other actions considered necessary by the plant clearance officer. Determinations shall be recorded on DD Form 1641, Disposal Determination/Approval, whether or not Property Disposal Review Board approval is required.

§ 24.211 Review of property disposal.

§ 24.211-1 Property Disposal Review Boards.

Property Disposal Review Boards shall be established by Heads of Procuring Activities or their designees. In appropriate cases, a Property Disposal Review Board may act for more than one activity. Board members, including a chairman and alternate members, shall be appointed in writing. A quorum of three voting members shall be required at each Board meeting. No person shall serve as a member of a Property Disposal Review Board in reviewing any property action in which he has participated.

§ 24.211-2 Required review.

The following property disposal actions shall be reviewed by a Property Disposal Review Board prior to final disposition action by the plant clearance officer:

(a) A determination that property is scrap or salvage, if the original acquisition

cost of the property is \$50,000 or more;

(b) A release from a scrap warranty, if the original acquisition cost of the property is \$25,000 or more;

(c) Any sale, purchase, or retention of property at less than cost made without competitive bids (see §§ 24.206-1(b) and 24.206-3) where the original acquisition cost of such property exceeds \$25,000;

(d) A determination to destroy or abandon property (see § 24.208) whenever a line item has an original acquisition cost of more than \$1,000, or whenever the aggregate sum of line items under \$1,000 exceeds \$5,000; and

(e) Any property disposal matter when requested by the contracting officer, or the plant clearance officer.

§ 24.211-3 Additional review.

In addition to review by the Property Disposal Review Board as required by § 24.211-2, the following transactions shall be reviewed by the Board established by the Departmental Headquarters of the administering activity:

(a) Any sale, purchase, or retention of property at less than cost made without competitive bids where the original acquisition cost of such property exceeds \$200,000;

(b) A determination to destroy or abandon property having an original acquisition cost of more than \$100,000; and

(c) Any other matters that may require review.

Transactions shall not be divided for the purpose of evading any review requirements outlined in § 24.211-2 and this section.

§ 24.211-4 Responsibility of Property Disposal Review Board.

The Property Disposal Review Board shall be responsible for approval or disapproval of proposed disposal determinations and transactions formally submitted by the plant clearance officer. Evaluations shall encompass propriety, conformance with regulations, soundness of judgment, and protection of the Government's interest. Concurrence of the majority of the Board shall be a requisite for approval. Unless the Board requests the submission of additional information prior thereto, the Board shall act on any transaction within 15 working days after receipt, or advise the initiating activity of the reasons for delay and the date action will be completed.

§ 24.211-5 Documents required for review board action.

Submissions to the Property Disposal Review Board shall include DD Form 1641, Disposal Determination/Approval, copies of applicable inventory schedules, and any additional information necessary to support the determination presented for review. The documentation submitted to the Board will be sufficiently complete to permit any reviewing authority to understand the reasons for the recommended action. All documentation presented will be in five copies

and shall include as a minimum the following:

(a) Basis for presenting the case to the Board, including a citation of the applicable regulations and directives;

(b) Clear indication as to the reason inventory is excess, including termination docket number, engineering change order number, or other identification, as appropriate;

(c) The extent of screening accomplished and the results of screening, when appropriate;

(d) A copy of the delegation of plant clearance authority to the receiving activity, in a case involving subcontractor inventory referred from another plant clearance activity;

(e) If the action involves a sale, information should be provided to show that the market has been tested and that the sale should be made at the price and quantity stated, or that the disposition recommended is proper and in the best interest of the Government;

(f) If the action involves destruction or scrapping of inventory due to security classification, documentation submitted to the Board will include evidence of action taken to declassify the inventory in order that normal disposition may be accomplished. Evidence will clearly indicate that inventory cannot be declassified before submitting such a request to the Board. Indication will also be made as to whether or not salvable unclassified components will be removed for reutilization or other disposition prior to destruction; or

(g) If disposal action involves inventory located at a subcontractor's plant, the prime contractor's name, address, and prime contract number, as well as the name, address, and purchase order number of the subcontractor will be provided.

§ 24.211-6 Review board records.

(a) Board approval shall be evidenced by the signature of the Chairman of the Board on DD Form 1641, Disposal Determination/Approval, which shall be forwarded to the plant clearance officer.

(b) The Board Chairman shall assure that minutes are maintained for each Board meeting. The minutes shall clearly reflect the action taken by the Board. A permanent record reflecting the action taken by the Board on each case shall be maintained. This record shall be appropriately indexed, and will include copies of all documentation presented to the Board, a listing of the inventory and a signed copy of the written notice sent to the plant clearance officer of the Board's action.

§ 24.212 Subcontractor inventory.

§ 24.212-1 General policy.

(a) The prime contractor and each subcontractor are responsible for review and approval of inventory schedules submitted by their respective next lower-tier subcontractors. Any rights which the prime contractor has or acquires in the inventory of his first-tier or lower-tier subcontractors, shall, to the extent directed by the contracting officer, be

exercised for the benefit of the Government in accordance with the provisions of the contract between the Government and the prime contractor. The disposal policies and procedures set forth in this part are applicable to contractor inventory in the possession of subcontractors, except subcontractor termination inventory to which § 8.209-4 of this chapter applies, and other exceptions set forth in this subpart.

(b) Subcontractor inventory shall be reported through the next higher-tier subcontractor to the prime contractor, who is responsible for reporting such property to the plant clearance officer having cognizance of the prime contractor's plant in accordance with § 24.203-1.

(c) When the property is located outside of his geographic area, the plant clearance officer for the prime contractor's plant shall transfer plant clearance responsibility to the plant clearance officer for the plant where the property is located. The plant clearance officer receiving the plant clearance request shall verify, screen and effect disposition within the time frame applicable under the prime contract. The plant clearance officer assuming plant clearance responsibility shall provide the prime plant clearance officer with all pertinent records including the DD Form 1636, Inventory Disposal Report (IDR), upon completion of plant clearance action. A copy of the DD Form 1636, IDR, will be retained by the plant clearance officer who prepared the form.

§ 24.212-2 Inventory schedules.

With the exception of inventory to which § 8.209-4 of this chapter applies, the forms of inventory schedules set forth in F-200.542, F-200.542c, F-200.543, F-200.543c, F-200.544, F-200.544c, F-200.545, F-200.545c, and F-200.832 may be used; but, their use is not required if substantially equivalent information as set forth in § 24.203 is obtained.

§ 24.212-3 Scrap.

The prime contractor and each higher-tier subcontractor shall review any recommendations of their respective subcontractors concerning scrap. If the prime contractor or the higher-tier subcontractor determines that any of the property is serviceable or usable, the subcontractor shall submit revised inventory data in accordance with such determination. The Government shall not be bound by any determination that property is scrap unless the determination has the prior approval of a plant clearance officer. A scrap warranty shall be obtained whenever property is sold as scrap, except as provided in 24.204.

§ 24.213 Accounting for contractor inventory.

(a) In accordance with the terms of the inventory schedules certificate set forth in the forms prescribed in § 24.203-3, the contractor or subcontractor shall inform the Government of any substantial change in the status of the inventory arising between the date of

submission of inventory schedules and final disposition of the inventory.

(b) As soon as plant clearance has been effected and disposal proceeds have been properly applied, the plant clearance officer shall prepare and distribute DD Form 1636, Inventory Disposal Report, in accordance with § 24.302-2.

(c) When any contractor inventory is lost, destroyed, damaged, or for any reason cannot be delivered by the contractor, that inventory shall be identified in the Inventory Disposal Report, and the matter reported to the Government property administrator, or to the termination contracting officer if termination inventory is involved.

Subpart C—Forms, Instructions, and Reports

§ 24.301 Forms.

The forms listed below are prescribed for use in the performance of plant clearance actions covered in this part.

§ 24.301-1 Standard Form 97, Certificate of Release of a Motor Vehicle, and Standard Form 97A, Certificate of Release of a Motor Vehicle (Agency Record Copy).

This form will be executed by the contracting officer and furnished to the purchaser. Plant clearance officers will process Standard Form 97 in connection with transfers, donations, and sales of motor vehicles. Precautionary measures will be taken to prevent unauthorized persons from obtaining these forms. (See F-100.97 and § 24.302-8(a) (5).)

§ 24.301-2 Standard Form 120 Reporting of Excess Personal Property.

This form shall be used as a cover form for transmitting inventory schedules to all screening activities except DIPEC. A form letter prepared in accordance with § 24.302-7 will be used to forward DD Forms 1342s to DIPEC for screening. However, Standard Form 120 may be used for this purpose (see F-100.120 and §§ 24.205-2 and 24.302-6).

§ 24.301-3 Standard Form 125, Report of Strategic and Critical Materials.

This form shall be used to report these materials to the General Services Administration in accordance with provisions of § 24.205-4(d). (See F-100.125.)

§ 24.301-4 DD Form 1131, Cash Collection Voucher.

This form shall be used to remit proceeds of sale to the appropriate disbursing officer. (See F-200.1131 and § 24.206-4(c).)

§ 24.301-5 DD Form 1149, Requisition and Invoice Shipping Document.

This form shall be used for all transfers and donations of excess or surplus contractor inventory. (See F-200.1149.)

§ 24.301-6 DD Form 1342s, DoD Property Record Supplementary Data.

This form shall be used to report idle industrial plant equipment to DIPEC for worldwide screening. (See F-200.1342s, § 24.205-3; see DSAM 4215.1, AFM 78-1,

AR 700-43, for instructions on how to prepare this form.)

§ 24.301-7 DD Form 1483, Shipping Document for GFM Turn-in.

This form is a form authorized for turn-in of government-furnished material.

§ 24.301-8 DD Form 1640, Request for Plant Clearance.

This form shall be used to request plant clearance assistance or transfer plant clearance (see § 24.212).

§ 24.301-9 DD Form 1636, Inventory Disposal Report.

This form shall be prepared for each completed plant clearance case (see § 24.302-2).

§ 24.301-10 DD Form 1638, Report of Excess and Surplus Contractor Inventory.

This form shall be used to provide a uniform reporting system of essential management data reflecting the scope and effectiveness of the contractor inventory utilization and disposal program (see § 24.302-3).

§ 24.301-11 DD Form 1641, Disposal Determination/Approval.

This form shall be used to support disposal determinations and to submit proposed transactions to the Property Disposal Review Board for review as required in § 24.211.

§ 24.301-12 DD Form 1639, Scrap Warranty.

This form shall be executed by a purchaser of scrap in accordance with § 24.204-5.

§ 24.301-13 DD Form 1642, Inventory Verification Survey.

This form shall be used to record verification results as prescribed in § 24.203-7(b) (see § 24.302-1).

§ 24.301-14 DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory.

This form shall be made available to contractors to assist them in properly preparing inventory schedules (see § 24.203-1).

§ 24.301-15 DD Form 1635, Plant Clearance Case Register.

This form provides a permanent numerical listing of plant clearance cases and shall be maintained by each office performing a plant clearance function. The space provided on the right-hand side of the form may be used for additional columns and headings considered essential by management officials (see F-200.1635 and § 24.302-4).

§ 24.301-16 DD Form 1637, Notice of Acceptance of Inventory.

This form shall be prepared to open each case and shall be distributed as follows: original to the contractor, one copy to the property administrator, and one copy to the termination contracting officer when termination inventory is involved.

§ 24.302 Instructions.

Additional instructions are provided below for completing the forms or reports prescribed in this part.

§ 24.302-1 Instructions for performing inventory verification and determination of allocability.

The following instructions shall be observed in verifying inventory schedules.

(a) *Allocability.* Determine allocability of inventory by reviewing contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include:

(1) Material which would not have been required for completion of the terminated or modified portion of the contract;

(2) Material in quantities indicating an unreasonable anticipation of contract requirements; or

(3) Material which might be utilized on the continuing portion of the contract, or diverted to other work of the contractor, either commercial or Government. Utilize sound judgment and experience gained during the life of the contract in detecting common items. In addition review—

(i) Contractor's purchase orders for current procurement of similar material.

(ii) Contractor's plans and orders for current and scheduled production.

(iii) Contractor's stock record cards, and

(iv) Contractor's bills of material prepared for items similar to the terminated or modified items.

(b) *Quantity.* Assure that the quantities of inventory available are in accordance with the quantities listed on the inventory schedules. While a complete physical count of each item of inventory normally need not be performed, sufficient checks to assure that the quantities are accurate shall be performed. (See Sampling Guide in paragraph (d) of this section.)

(c) *Condition.* Assure that the condition of the inventory is in accordance with that shown on the inventory schedules.

(d) *Sampling guide.* Use minimum sampling standards indicated below. If significant discrepancies are revealed, increase sampling size.

(1) To determine which of the items listed on inventory schedules should be subjected to verification, all of the inventory schedules which comprise any one class would comprise one lot (e.g., all schedule A items would comprise one lot; all schedule B would comprise a second lot, etc.);

(2) Each lot shall be examined to determine the number of lines in each of the dollar groupings in column A below;

(3) The percentage in column B shall be applied to the total number of such lines in each dollar grouping to obtain

the number of lines to be verified. Example: Assume that one lot of all items listed on schedule B consists of 20 pages with a total of 160 lines of various items of Raw Material, Purchased Parts, etc., to determine the (minimum) number of lines of the total of 160 which are to be verified, the steps outlined above are applied as follows:

Line extension dollar amount	Total number of lines	Percentage	Total number of lines to be verified
\$1 to \$9.99	100	5	5
\$10 to \$99.99	10	10	1
\$100 to \$499.99	16	25	4
\$500 to \$999.99	20	50	10
\$1,000 and over	14	100	14
Total	160		34

(4) Having determined (from the above) the number of lines to be verified, the lines shall be chosen at random from each applicable subgroup. All of the units on each line selected shall be thoroughly verified as to quantity, condition, etc., in accordance with the following—

(i) *Schedule A items—metals in mill product form.* Exact determination of the quantities or weights listed is not required; however, a check shall be made to verify that the amount or weight is approximately correct. For example, on a line listing 3,400 pounds of steel strip in rolls, visually select an average-size roll, have it weighed, and multiply this weight by the number of rolls. Likewise, for wire on spools with the total quantity indicated in pounds, weigh several spools to verify weight shown on each spool. If correct, accept the weight as shown on each spool and merely total the various spool weights. For material susceptible to these checks, the dimensions of single samples should be checked by scale or micrometers. The composition, hardness, type alloy, etc., listed on the schedules should be checked against original tags or markings of the producer whenever possible.

(ii) *Schedule B items—raw materials (other than metals), purchased parts, etc.* Visually check representative sample pieces from each line selected for inspection to verify identity. Refer to Technical Manuals and Government and commercial drawings to the extent necessary for satisfactory identification. For small purchased parts, weight count the material. When an item is packed in similar size containers, equally loaded, weight counting of several such containers and multiplying the number of containers is satisfactory. On purchased parts still in the original supplier's packages, acceptance of the quantity shown on the original marking is satisfactory. Finished product and finished components shall be inspected for strict compliance with contract specifications. Finished product reported in connection with a terminated contract shall be verified to the same extent as would have been required in

the absence of termination. Be particularly alert to the possibility of the contractor's having included rejects or spoilage as acceptable inventory.

(iii) *Schedule C items—work in process.* Visually examine representative samples from each line selected for inspection to determine that the state of completion agrees with that shown on the schedules. Refer to specifications, drawings, bills of material, etc., as necessary, for this verification. Be particularly alert to prevent the inclusion of nonreworkable rejects or spoilage.

(iv) *Schedule D items—dies, jigs, fixtures, and special tools.* Visually examine representative samples from each line selected for inspection to verify identity. Identity can usually be ascertained by part numbers stamped on or molded into the tools. Particular alertness shall be exercised to ascertain that these items were actually required in the production of the items under the terminated, modified, or completed contract and that they were not common to the contractor's other manufacturing processes.

(e) *Completion of inventory verification survey.* As soon as verification has been accomplished, the completed survey form should be returned to the plant clearance officer, together with one copy of inventory schedule(s) marked to identify items selected for sampling.

§ 24.302-2 DD Form 1636, Inventory Disposal Report.

This form shall be prepared for each completed plant clearance case. Inventory Disposal Reports shall be distributed to the appropriate contracting officer and the property administrator and to the referring activity when a case is forwarded to another activity for plant clearance actions. The primary plant clearance officer shall be responsible for preparing and distributing a consolidated Inventory Disposal Report, as appropriate. All items on the form are self-explanatory, except as follows:

(a) *Item 11.* Insert total dollar value of inventory reported for plant clearance purposes.

(b) *Item 12.* Insert amount to be deducted from the gross value of inventory due to errors in pricing, shortages, overages, etc. Explain "Remarks," item 25.

(c) *Item 14.* Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost (see § 24.202).

(d) *Item 15.* Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges (see § 24.202-2).

(e) *Item 16.* Insert the total acquisition cost of all transfers accomplished. For lines 16A through 16F, insert subtotals representing value of transfers to each service or agency indicated.

(f) *Items 18 through 20.* Insert acquisition cost and gross proceeds. Where approved costs of sale are reimbursed from proceeds, net proceeds shall be identified under "Remarks."

(g) *Item 21.* Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(h) *Item 24.* May be used to report transactions not otherwise identified.

(i) *Item 27.* (1) Explain all entries in Item 12. (2) Show specific disposition of proceeds reported in items 14 and 15; i.e., indicate contract number and invoice to which proceeds were applied and verified, amounts deleted from specific contractor claims, or applied as a credit to the claim. If payment was made to the Government, indicate disbursing office where proceeds were deposited. (3) Explain any unusual entries requiring explanation.

§ 24.302-3 DD Form 1638, Report of Excess and Surplus Contractor Inventory.

This form shall be used by all contract administration offices having plant clearance responsibility for reporting cases under which disposition of contractor inventory actually has been effected. Cases transferred to other offices will not be included. Only the column total for each line of this report will be completed, unless the departmental headquarters of the administering activity desires a breakout of DIPEC-controlled property and directs completion of other column. Reports shall be prepared on a quarterly basis covering report periods ending March 31, June 30, September 30, and December 31 and shall be submitted in duplicate to the Departmental Headquarters of the administering activity, no later than 10-working days after the close of the report period. All items on the report are self-explanatory except as follows:

(a) *Line 1.* Insert exact totals from line 7 of preceding report.

(b) *Line 2.* Insert net increase or decrease due to shortage, overages, errors, or withdrawals (other than purchases or refutations at cost).

(c) *Line 3.* Insert totals representing all excess inventory reported by the contractors for plant clearance purposes during reporting period.

(d) *Line 4.* Insert total of lines 1, 2 and 3.

(e) *Line 5.* Insert totals representing all plant clearance cases completed during the reporting period. Cases shall not be reported as completed until physical removal (or other final disposition) has been accomplished. Acquisition cost must equal acquisition cost on line 19.

(f) *Line 8.* Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost (see § 24.201).

(g) *Line 9.* Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges (see § 24.202-2).

(h) *Line 10.* Insert total acquisition cost of all transfers accomplished during the reporting period. On lines 10A through 10H, insert subtotals representing value of transfers to each service or agency indicated. Line 10 represents the total of the individual amounts shown on lines 10A through 10H. Caution should be taken to exclude the amounts on lines 10A through 10H when obtaining the grand total on line 19 of the several columns of section II.

(i) *Lines 12 through 14.* Insert gross proceeds. When approved costs of sale are reimbursed from proceeds, net proceeds shall be identified in "Remarks."

(j) *Line 15.* Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(k) *Lines 16 and 18.* Lines 16 and 18 may be used to identify and report transactions not otherwise identified.

(l) *Line 19.* Insert total of lines 8 through 18. Acquisition cost must equal acquisition cost on line 5.

§ 24.302-4 Instructions for establishing a plant clearance case.

Upon receipt of acceptable inventory schedules or DD Form 1342s, from the contractor or from other Government sources provided by this part, the plant clearance officer shall assign a plant clearance case number in accordance with § 24.302-5 and establish a plant clearance case file. The case number, contractor's name, and contract number shall be identified on the case folder. Termination inventory shall be identified with the word "Termination" on the outside of the case folder to insure priority handling. Separate submissions of inventory schedules and DD Form 1342s, applicable to one contract at the same location, shall be consolidated, whenever possible, under one plant clearance case. The plant clearance case file, as a minimum, shall contain the following:

(a) Copy of DD Form 1637, Notice of Acceptance of Inventory;

(b) Copy of inventory schedules or DD Form 1342s. (The copy of the inventory schedule will be annotated by the plant clearance officer to reflect all disposal actions accomplished. Upon completion of all plant clearance actions, this copy should reflect disposition of all inventory reported for plant clearance action.);

(c) Copy of letters or transmittal documents forwarding contractor inventory to the appropriate screening activity;

(d) Copies of all shipping instructions, correspondence, or other instructions directing the disposition of contractor inventory or evidence of no requirements;

(e) Copies of all shipping documents accomplishing transfer or shipment of contractor inventory;

(f) Copy of Inventory Verification Survey or other forms evidencing completion of allocability review;

(g) Copies of appropriate forms authorizing donation;

(h) Copies of all appropriate forms evidencing the sale of contractor inventory;

(i) Appropriate documentation indicating proper disposition of any proceeds resulting from plant clearance action;

(j) Copies of all other correspondence or forms bearing on disposal actions concerned with the case;

(k) Copies of all pertinent correspondence and approvals concerning Property Disposal Review Board cases, and antitrust clearance, when required; and

(l) Copy of Inventory Disposal Report.

§ 24.302-5 Instructions for assigning plant clearance case number.

(a) The plant clearance case number shall consist of a three-part number. The code structure of the first part shall be a six digit (Alphanumeric combination), as shown in the DoD activity Address Directory (see DSAH 4140.1, AR 725-50-1, MCOP 4420.2C, CG 364, AFM 75-6), assigned to the contract administering activity.

(b) The second part shall consist of the following:

7th through 10th digits. Consecutively numbered serial number, locally assigned, commencing with 0001 at the beginning of each calendar year.

(c) The next position, 11th digit, will be a single Alpha code to identify the Military Department:

C—Army.
Q—Navy.
E—Air Force.
L—Marine Corps.
U—Defense Supply Agency.

(d) Combined, the plant clearance case number assigned by the plant clearance officer will be in accordance with the following example:

"S2302A-0010-Q"

(1) "S2302A" indicates that the Detroit Defense Contract Administration Services Region is designated as the office to which the plant clearance officer is assigned.

(2) "0010" indicates that this is the tenth case established by the Detroit Defense Contract Administration Services Region.

(3) "Q" indicates that the Navy is the owning military service.

(e) The plant clearance case number assigned will be recorded on DD Form 1635, Plant Clearance Case Register, which will provide a permanent numerical listing of plant clearance cases.

§ 24.302-6 Instructions for preparing Standard Form 120, Report of Excess Personal Property.

The Standard Form 120 will be completed as follows:

(a) *Report number.* Enter the plant clearance case number.

(b) *Date mailed.* Enter the date the report is mailed to the Inventory Control Points or the General Services Administration regional Office.

(c) *Total cost.* Enter the total of all amounts shown on the inventory schedules.

(d) *Type of report.* Indicate the type of report by entering an "X" in the appropriate block. Block 4f will always be completed to show that it is contractor inventory.

(1) *Original.* An original report shall be made to report an initial quantity of an item or items as excess. An original report shall also be prepared to forward contractor inventory to the General Services Administration regional offices.

(2) *Corrected.* If it is necessary to correct an original report previously submitted, in all cases complete blocks 1, 2, 4, 5, and 7 on the corrected Standard Form 120. Complete the remaining blocks and columns on the form only to the extent necessary to show the correction. For example, if information in block 9 on the original report is the only item that needs correction, complete only block 9 (in addition to the five identification blocks mentioned above) on the corrected report.

(3) *Partial withdrawal.* If the report is to withdraw a part of the excess previously reported on an original report, complete blocks 1, 2, 3, 4, 5, and 7. The line items or portions of line items withdrawn from the inventory schedules must be reidentified by an appropriate entry in block 18 (a) or (b). The number of units withdrawn must be shown in 18(e) and the acquisition cost applicable to these items to be withdrawn must be shown in 18(g).

(4) *Total withdrawals.* If the report withdraws all items on the inventory schedule on an original report, complete blocks 1, 2, 3, 4, 5, and 7 only and provide explanatory remarks in block 18(b).

(e) *To.* Enter name and address of the inventory control point and symbol to which the report is made or the appropriate General Services Administration regional office.

(f) *Appropriation or fund to be reimbursed.* Leave blank.

(g) *From.* Enter the name and address of the department, office, or subdivision thereof making the report. For example, the Defense Contract Administration Services Region, Cleveland, would be entered as follows: DSA, DCASR, Cleveland, DCRO-CMC, 1367 East Sixth Street, Cleveland, Ohio 44114.

(h) *Report approved by.* Enter signature of plant clearance officer.

(i) *For further information contact.* Enter name, title, address, and telephone number of the plant clearance officer who may be contacted for further information about the property.

(j) *Agency approval.* Leave blank.

(k) *Send purchase orders or disposal instruction to.* Enter same as (i) above.

(l) *GSA Control No.* Not to be used by reporting activity.

(m) *FSC Group No.* Leave blank.

(n) *Location of property.* Give the name and address of the contractor who is holding the property.

(o) *REIM/REQD. (X) No.*

(p) *Agency Control No.* Leave blank.

(q) *Surplus release date.* Enter date calculated as 75 days from the date that screening in accordance with § 24.205-2 was initiated. This is the ARD.

(r) *Excess property list.* Leave blank.

(1) *Item No.* Leave blank.

(2) *Description.* In this column enter the following information—

(i) ----- copies of inventory schedules attached; DD Form -----, Pages 1 through -----

(ii) Deadline Departmental Screening Date ----- (Date § 24.205-2(a) screening is to be completed.)

(iii) Screening Completion Date ----- (Enter date calculated as 90 days from the date that screening in accordance with § 24.205-2 was initiated.)

(iv) Place the following note in the description column: "In the event that transfer of this material is to be effected, it is imperative that fund appropriations for the transportation, packing, crating, and handling of the materials be furnished with the transfer order."

(v) Inventory schedules submitted to the General Services Administration: Place the following receipt notice in column 18(b): "Receipt is hereby acknowledged: signed by -----; date -----"

(vi) Contract number.

§ 24.302-7 Form letter for transmitting DD Form 1342s to DIPEC.

The following minimum information shall be included in the form letter:

(a) The number of DD Form 1342s included;

(b) Automatic release date;

(c) Screening complete date;

(d) Contractor's name and address;

(e) Procurement instrument identification (contract) number;

(f) The name and address of the procuring activity that awarded the facility or other type contract which permitted the contractor to acquire the industrial plant equipment;

(g) The location of the industrial plant equipment;

(h) Total acquisition cost;

(i) A note stating that the ARD will not be extended;

(j) A note substantially as follows: All requests for transfer or shipment must indicate appropriate fund citation for packing, crating, and handling charges. Government Bills of Lading (GBL) should be furnished when possible. If shipments will be accomplished by other than a GBL, DIPEC must cite transportation funds; and

(k) A signature block containing the name of the plant clearance officer.

§ 24.302-8 General sales terms and conditions and special conditions of sale.

(a) The following general sales terms and conditions shall be included, as a minimum, in contractor-conducted sales by formal invitation:

(1) *Inspection.* The Bidder is invited, urged, and cautioned to inspect the property to be sold prior to submitting a bid.

Property will be available for inspection at the places and times specified in the Invitation. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.

(2) *Condition and location of property.* Unless otherwise specifically provided in the Invitation, all property listed therein is offered for sale "as is" and "where is." If it is provided therein that the Contractor shall load, then "where is" means f.o.b. conveyance at the point specified in the Invitation. The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property or its fitness for any use or purpose. Except as provided in Conditions in subparagraphs (8) and (10) of this paragraph, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

(3) *Consideration of bids.* The Bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (sixty (60) calendar days if no period is specified by the Contractor or by the Bidder, but not less than ten (10) calendar days in any case) and that during such period his bid will remain firm and irrevocable. The right is reserved to reject any or all bids, to waive any technical defects in bids, and unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the Invitation otherwise provides, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item. In case of error in the extension of prices, unit prices will govern.

(4) *Payment.* The Purchaser agrees to pay for property awarded to him in accordance with the prices quoted in his bid. Payment of the full purchase price, subject to any adjustment pursuant to Condition in subparagraph (8) of this paragraph, must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made pursuant to Condition in subparagraph (8) of this paragraph, payment must be completed immediately subsequent to such adjustment. The balance of the purchase price after applying the total bid deposit made by the Purchaser (if a bid deposit was required) under the Invitation (or otherwise the full purchase price) shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor reserves the right to apply any bid deposits made under this Invitation by a Bidder against any amounts due to the Contractor under a contract awarded by him under this Invitation for Bid. In those instances where the total sum becoming due to the Contractor from the Purchaser on a contract awarded to him under the Invitation is

less than the total amount deposited with his bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

(5) *Title.* Unless otherwise specified in the Invitation, title to the items of property sold hereunder shall vest in the Purchaser as and when full and final payment is made, except that if the Invitation provides that loading will be performed by the contractor, title shall not vest until such payment and loading are completed. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing, a certificate of release, Standard Form 97, Certificate of Release of a Motor Vehicle, executed by the Contracting Officer (or a State certificate of title), shall be furnished for each vehicle and piece of equipment.

(6) *Delivery and removal of property.* Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title of the property in him. Delivery shall be made at the designated location, and the Purchaser shall remove the property at his expense within the period of time originally specified in the Invitation or within such additional time as may be allowed by the Contractor. The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by the removal operations of the Purchaser. If the Purchaser is permitted by the Contractor to remove the property after the expiration of the period prescribed or allowed for removal, the Contractor, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge.

(7) *Default.* If the successful Bidder fails to make full payment, to remove property on the specified date, or to comply with any other terms and conditions thereof, the right is reserved to sell or otherwise dispose of any or all such property and to charge losses and expenses incidental thereto to the account of the defaulting Bidder. The bid deposit (if required in the Invitation) shall be applied against any such losses and expenses.

(8) *Adjustment for variation in quantity or weight.* When property is sold on a "unit price" basis, the Contractor reserves the right to vary the quantity or weight delivered by fifteen percent (15%) from the quantity or weight listed in the Invitation; and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted upwards or downwards in accordance with the unit price and on the basis of the quantity or weight actually delivered. No adjustment for variation shall be made where property is sold on a "price for the lot" basis.

(9) *Weighing.* When weighing is necessary to determine the exact purchase price hereunder, the Purchaser shall arrange for and pay all expenses of weighing material. All switching charges shall be paid by the Purchaser. When removal is by truck, weighing shall be subject to

supervision and accomplished on (i) contractor scales, (ii) certified scales, or (iii) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to the railroad for freight purposes. Approved weighing shall establish the exact purchase price and govern the making of full payment thereon.

(10) *Risk of loss.* After mailing notice of award and prior to the date specified for removal, the Contractor shall be responsible only for the exercise of reasonable care for the protection of the property. After passage of title and after the date specified for removal of the property or any extension approved in writing by the Contractor, all risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser.

(11) *Limitation on Contractor and Government liability.* The measure of Contractor and Government liability in any case when liability of Contractor and Government to the Purchaser has been established shall not exceed refund of such portion of the purchase price as the Contractor may have received.

(12) *Oral statements and modifications.* Any oral statement or representation by any representative of the Contractor changing or supplementing the contract or any Condition thereof is unauthorized and shall confer no right upon the Purchaser.

(13) *Eligibility of bidders.* The Bidder certifies that he is not: (i) Under 21 years of age; (ii) a civilian employee of the Department of Defense or the U.S. Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (iii) a member of the Armed Forces of the United States, including the U.S. Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (iv) an agent, employee or immediate member of the household of personnel in subdivisions (ii) and (iii) of this subparagraph.

(14) *Claims liability.* The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

(b) The following special conditions of sale shall be included in contractor-conducted sales by formal invitation, as

required, or at the specific request and direction of the plant clearance officer:

(1) *Demilitarization.* When demilitarization of property by the Purchaser is required, whether on or off the contractor or Government premises, the following special conditions shall be included in the invitation for bids on property located in the United States or outside the United States, as appropriate—

(i) *Demilitarization.* Item(s) ----- are required to be demilitarized by the Purchaser in the manner and to the degree set forth below: -----

(a) Insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Chapter XIV, Part 3, of DOD 4160.21 M for property located in the United States.

(b) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 2, Chapter XIV, Part 3, of DOD 4160.21 M.

(ii) *Demilitarization on Government premises.* The property requiring demilitarization shall not be removed from Government premises and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization and further agrees to do any necessary work to restore the working area to its present condition after completely removing the demilitarized property.

(iii) *Demilitarization on other than Government premises.* The property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization.

(iv) *Failure to demilitarize.* If the Purchaser fails to demilitarize the property being sold herein in accordance with the terms of the contract, the contractor may, at his option and upon ten (10) days' written notice (calculated from date of mailing) to the Purchaser:

(a) Repossess the property, complete the demilitarization thereof, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor prior to the return of the property to the Purchaser all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(b) Repossess the property, complete the demilitarization thereof, resell the property, and charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs incurred by the Contractor in repossessing, demilitarizing, and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(c) Repossess the property and resell it under similar terms and conditions. In the event this option is exercised the Contractor shall charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the cost to the Contractor repossessing and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay the excess cost to the Contractor.

(2) *Performance bond.* When work, other than loading, is to be performed by the purchaser and it is considered necessary to insure performance by the purchaser, a performance bond shall be required. Generally, the amount of each performance bond shall be 100 percent of the estimated cost of the work to be performed. If a requirement for a 100 percent performance bond would be disadvantageous to the contractor or to the Government, the amount may be reduced to not less than 50 percent of the estimated cost of the work to be performed.

The execution of a performance bond in a specified amount shall be required, as follows:

Performance bond. Within ten (10) days after notice of award, the Purchaser shall furnish a performance bond in the sum of \$_____ to cover the Purchaser's obligations and undertakings herein. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until such time as the bond has been received.

(3) *Liability and insurance.* The following shall be required when the work to be performed by the purchaser warrants a special condition of sale:

Liability and insurance. The Purchaser shall at his own expense procure and maintain during the term of the contract insurance as follows:

(A) Standard workmen's compensation and employer's liability insurance such as may be proper under State and Federal statutes. However, upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law, the Contractor may waive this requirement.

(B) Bodily injury liability insurance in the amount of not less than \$50,000 any one person, and \$250,000 any one accident or occurrence.

(C) Property damage liability insurance including any and all property, whether or

not in the care, custody, or control of the Purchaser.

(4) *Dangerous property.* A warning of potential danger shall be included in all cases where it cannot be certified that the property is completely innocuous. The following condition shall be used for this purpose:

Dangerous property. Purchasers are warned that the property purchased may contain items of explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

(5) *Narcotic drugs and chemicals.* The sale of narcotic drugs and chemicals shall be subject to the following special conditions:

Narcotic drugs and chemicals. Bids will be rejected unless the Bidder submits the following certification with his bid:

"The undersigned represents and warrants that he is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics."

(6) *Radioactive material.* The following condition shall be used whenever there is the possibility that the property offered for sale is capable of emitting ionized radiation:

Radioactive material. Purchasers are warned that the property may be capable of emitting ionized radiation in varying degrees. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from any and all such claims. As a safety precaution, the Purchaser should warn future possessors or users of the property that it may be capable of emitting ionized radiation.

(7) *Scrap warranty.* The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap warranty. The Purchaser represents and warrants that the property will be used only as scrap, in its existing condition or after further preparation, and will not be resold until: (A) scrapping has been accomplished, or (B) the Purchaser obtains an identical warranty from any subsequent purchaser.

(8) *Antitrust clearance.* When a sales offering includes property with an acquisition cost of \$3 million or more, the following condition shall be included:

Antitrust. To comply with Section 207 of the Federal Property and Administrative Services Act of 1949, as amended, when property offered for sale has an acquisition cost of \$3 million or more, or when the property consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to

sixty (60) days for acceptance of his bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not tend to create or maintain a situation inconsistent with the antitrust laws.

(c) The following special conditions of sale may be added at the option of the contractor:

(1) *Sales and use tax liability.* If the purchase of the property is subject to a state sales or use tax, a special condition of sale shall be included stipulating that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

(2) *Safety, security, and fire regulations.*

(3) *Bid deposits.*

(4) *Other special conditions.* All other special conditions of sale considered necessary by the Contractor shall be subject to the prior approval of the plant clearance officer. Approval shall be granted, provided, the prescribed conditions of sale are not altered or affected thereby and the interest of the Government is not adversely affected.

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

31. In § 30.2, item 306.1 is revised; and in § 30.3, item 306.1 is revised, as follows:

§ 30.2 Appendix B—Control of Government property in possession of contractors.

306.1 *Centrally reportable plant equipment.* Notwithstanding the approval of a contractor's property accounting and control system, the contractor shall, with respect to items identified as industrial plant equipment (IPE) (including those items which are a part of a manufacturing system but excluding general purpose components of special test equipment) prepare a DD Form 1342 (Appendix F, F-200.1342) at the time of acquisition or receipt to be forwarded to DIPEC pursuant to AR 700-43, AFM 78-1, DSAM 4215.1—"Defense Industrial Plant Equipment Center (DIPEC) Operations." If changes occur in the data as originally recorded, a change report will be made to DIPEC as prescribed by DSAM 4215.1. When IPE including general purpose components of special test equipment is no longer required at the point of acquisition or receipt, the contractor shall prepare a DD Form 1342 (Appendix F, F-200.1342) and reflect thereon any changes in original data not previously reported. The contractor shall retain the original of each DD Form 1342 and forward the copies of DIPEC through the property administrator pursuant to 24-205.3. Use of the DD Form 1342 as the official property record is optional. Subsequent to the disposal of IPE the contractor will prepare DD Form 1342, Section 4, pursuant to DSAM 4215.1 for transmittal to DIPEC.

§ 30.3 Appendix C—Control of property in possession of nonprofit research and development contractors.

306.1 *Centrally reportable plant equipment.* Notwithstanding the approval of a contractor's property accounting and control system, the contractor shall, with respect to

items identified as industrial plant equipment (IPE) (including those items which are a part of a manufacturing system but excluding general purpose components of special test equipment) prepare a DD Form 1342 (see Appendix F, F-200.1342) at the time of acquisition or receipt to be forwarded to DIPEC pursuant to AR 700-43, AFM 78-1, DSAM 4215.1—"Defense Industrial Plant Equipment Center (DIPEC) Operations." If changes occur in the data as originally recorded, a change report will be made to DIPEC as prescribed by DSAM 4215.1. When IPE including general purpose components of special test equipment is no longer required at the point of acquisition or receipt, the contractor shall prepare a DD Form 1342 (see F-200.1342) and reflect thereon any changes in original data not previously reported. The contractor shall retain the original of each DD Form 1342 and forward the copies to DIPEC through the property administrator pursuant to 24-205.3. Use of the DD Form 1342 as the official property record is optional. Subsequent to the disposal of IPE, the contractor will prepare DD Form 1342, Section 4, pursuant to DSAM 4215.1 for transmittal to DIPEC.

[Rev. 26, ASPR, Feb. 1, 1968] (Sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[FR. Doc. 68-6009; Filed, May 17, 1968;
8:50 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.585]

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Numerical Controls

Part 42, Chapter I, Title 22 of the Code of Federal Regulations is being amended to implement the permanent numerical limitations on immigration prescribed by the Act of October 3, 1965, which will become effective on July 1, 1968.

1. Section 42.60 is amended to read as follows:

§ 42.60 Control of numerical limitations by the Department.

(a) Centralized control of the numerical limitations on immigration specified in sections 201, 202, and 203 of the Act and section 21(e) of the Act of October 3, 1965, is established in the Department. In order to effectuate this control, the Department shall limit the number of immigrant visas that may be issued and the number of adjustments of status and conditional entries that may be granted to aliens subject to these numerical limitations as follows: (1) Within the numerical limitations specified in sections 201, 202, and 203 of the Act, a number not to exceed a total of 45,000

in any of the first three quarters of any fiscal year and of 17,000 each month plus any balance remaining from authorizations for preceding months in the same fiscal year; (2) within the numerical limitations specified in section 21(e) of the Act of October 3, 1965, a number not to exceed a total of 12,000 each month plus any balance remaining unused from authorizations for preceding months in the same fiscal year.

(b) Within the foregoing limitations and based on the chronological order of the Immigration and Naturalization ported by consular officers pursuant to § 42.64(b) and of applicants for adjustment of status as reported by officers of the Immigration and Naturalization Service, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and adjustments of status.

2. Section 42.61 is amended to read as follows:

§ 42.61 Consular records of visa applications.

(a) *Waiting lists.* Consular officers at Foreign Service posts designated to issue immigrant visas shall maintain records of individual immigrant visa applicants who are entitled to immigrant classification and their priority dates, which shall constitute "waiting lists" within the meaning of section 203 of the Act and which shall indicate the chronological and preferential order in which consideration may be given to immigrant visa applications within the several immigrant classifications subject to the numerical limitations specified in sections 201, 202, and 203 of the Act and section 21(e) of the Act of October 3, 1965, or within the classes described in section (201(b) or 101(a)(27) (B) through (E) which are not subject to numerical limitations. An alien is entitled to immigrant classification if he (1) is the beneficiary of an approved petition according him immediate relative or preference status, or (2) has obtained an individual labor certification, or (3) has satisfied the consular officer that he (1) is entitled to special immigrant status under section 101(a)(27) (B) through (E) of the Act, or (ii) is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations (29 CFR Part 60) or is within one of the precertified occupations among the categories listed in Schedule C of those regulations, or (iii) has a relationship to a U.S. citizen or resident alien which statutorily exempts him from the provisions of section 212(a)(14), or (iv) is within one of the classes described in § 42.91(a)(14) (ii) and that he is therefore not within the purview of section 212(a)(14) of the Act.

(b) *When record shall be made.* (1) A record that an alien is an immigrant visa applicant shall be made on Form FS-499 (Immigrant Visa Control Card) whenever: (i) The consular officer has received an approved visa petition on behalf of an alien, or (ii) the consular

officer has received an individual labor certification as specified in sections 101(a)(27) (A) and 203(a)(8) of the Act for an alien, or (iii) the consular officer has determined that (a) an alien is entitled to special immigrant status under section 101(a)(27) (B) through (E) of the Act, or (b) an alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is within one of the professional or occupational groups listed in Schedule A or is within one of the precertified occupations among the categories listed in Schedule C set forth in Department of Labor regulations (29 CFR Part 60), or (c) an alien who seeks to procure an immigrant visa has a relationship to a U.S. citizen or resident alien which statutorily exempts him from the provisions of section 212(a)(14) or (d) circumstances specified in § 42.91(a)(14) (i) are applicable to the applicant and that he is therefore not within the purview of section 212(a)(14) of the Act.

(2) A separate record shall be made of family members entitled to immigrant status derivatively whenever it shall be determined that a spouse or child is chargeable to a different foreign state or other numerical limitation than the principal alien, with appropriate cross references. The provisions of section 202(b) of the Act shall be applied as appropriate when the turn of either spouse or of a parent is reached on the waiting list.

3. Section 42.62 is amended to read as follows:

§ 42.62 Priority date of individual applicants.

(a) The priority date of an applicant who is the beneficiary of an approved visa petition shall be the filing date of the petition.

(b) The priority date of other applicants shall be: (1) The date that an individual labor certification under section 212(a)(14) of the Act has been granted for the applicant, or (2) the date of the receipt by the consular officer of evidence sufficient to satisfy him that (i) the applicant is within one of the professional or occupational groups listed in Schedule A or is within one of the precertified occupations among the categories listed in Schedule C in the Department of Labor regulations (29 CFR Part 60), or (ii) the applicant has a relationship to a United States citizen or resident alien which statutorily exempts him from the provisions of section 212(a)(14), or (iii) circumstances specified in § 42.91(a)(14) (ii) are applicable to the applicant and that he is therefore not within the purview of section 212(a)(14) of the Act.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, an alien who, before February 1, 1966, was registered as an unqualified non-preference registrant and who subsequently qualified under the provisions of section 212(a)(14) under Departmental regulations in effect at that time, or any

alien who between February 1, 1966, and July 1, 1968, qualified for registration as a nonpreference immigrant under Department regulations in effect at the time, but has been unable to qualify for any preference status, may retain his original priority date until such time as a nonpreference visa shall become available for his use: *Provided, however, That no alien shall be given a priority date earlier than January 1, 1944.*

4. Section 42.63 is amended to read as follows:

§ 42.63 Order of consideration.

Consular officers shall request applicants to take the steps necessary to meet the requirements of section 222(b) of the Act in order to apply formally for a visa, as follows:

(a) In the chronological order of the priority dates of all applicants within each of the immigrant classifications specified in section 203(a) of the Act and section 21(e) of the Act of October 3, 1965, and

(b) In the order specified in section 203(b) of the Act with regard to all applicants chargeable to the same foreign state or dependent area as specified in section 202(a) and 202(c) of the Act.

5. Section 42.64 is amended to read as follows:

§ 42.64 Reports of numbers and priority dates of applications on record.

(a) Consular officers shall report periodically, as the Department may direct, the number and priority dates of all applicants subject to the numerical limitations prescribed in section 201, 202, and 203 of the Act and section 21(e) of the Act of October 3, 1965 and whose immigrant visa applications have been recorded in accordance with § 42.61(b).

(b) Consular officers shall also report periodically, as the Department may direct, the number and priority dates of all applicants described in paragraph (a) of this section who have informed the consular officer that they have obtained the documents required by the latter under section 222(b) of the Act and concerning whom the necessary clearance procedures have been completed.

Effective date. The amendments to the regulations contained in this order shall become effective on July 1, 1968.

The provisions of section 4 of the Administrative Procedure Act (80 Stat. 383; 5 U.S.C. 553) relative to notice of proposed rule making are inapplicable to this order because the regulations contained herein involve foreign affairs functions of the United States.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104)

BARBARA M. WATSON,
Acting Administrator, Bureau of
Security and Consular Affairs,
Department of State.

MAY 14, 1968.

[F.R. Doc. 68-5960; Filed, May 17, 1968;
8:48 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 747—EQUAL EMPLOYMENT OPPORTUNITY

Part 747 is revised to reflect current procedural changes and to include the provisions of Executive Order 11375.

Sec.

- 747.1 Introduction.
- 747.2 Filing complaints.
- 747.3 Presentation of complaint.
- 747.4 Settlements.
- 747.5 Organization or third party complaints.
- 747.6 Equal employment opportunity complaints in conjunction with adverse action appeals filed with the Civil Service Commission.

AUTHORITY: The provisions of this Part 747 issued under 5 U.S.C. 301, 39 U.S.C. 501; Executive Orders 11246, 11375.

§ 747.1 Introduction.

(a) **Authority and scope.** (1) Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, abolished the President's Committee on Equal Employment Opportunity and established the authority of the Civil Service Commission to supervise and provide leadership and guidance on Equal Employment Opportunity and reaffirmed Government policy for exclusion and prohibition of discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, sex, or national origin. The Executive orders point out that discrimination because of race, color, religion, sex, or national origin is contrary to the constitutional principles and policies of the United States and that it is the policy of the Executive Branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government.

(2) This Part 747 issued in conformity with and under the authority of Executive Order 11246 and Executive Order 11375 shall govern the administration of employment policies in the Post Office Department. This section does not apply to discrimination in employment by government contractors and subcontractors.

(b) **Designation of equal employment opportunity officer.** The Assistant Postmaster General, Bureau of Personnel, is the Equal Employment Opportunity Officer for the Post Office Department. He shall:

(1) Be directly responsible to the Postmaster General and have the authority necessary to enable him to carry out his responsibilities under these conditions.

(2) Advise the Postmaster General regarding the preparation of regulations, reports, and other matters dealing with the exclusion and prohibition of discrimination under Executive Order 11246 and Executive Order 11375.

(3) Provide for the receipt and prompt investigation of complaints of alleged discrimination in personnel matters within the Post Office Department Head-

quarters and field installations, including complaints of general discrimination by organizations related to a specific complaint under this Part 747.

(4) Evaluate from time to time the sufficiency of the total affirmative action program for equal employment opportunity and report thereon to the Postmaster General with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities.

(5) Make final decisions for the Department on complaints of discrimination and order such corrective measures as he deems necessary.

(6) Be responsible for developing a complete case record, including an adequate transcript or agreed summary of any hearing, sufficient to dispose of all relevant issues. Whenever necessary or appropriate for a full development of the case, the investigation shall include an appraisal of employment practices in the organizational segment or unit in which the alleged discrimination occurred.

(c) **Designation of deputy equal employment opportunity officers.** The following officials are designated as Deputy Equal Employment Opportunity Officers for the indicated units, and as such are directly responsible to the Equal Employment Opportunity Officer in carrying out their functions as outlined in these regulations.

Unit	Deputy equal employment opportunity officer
Bureau or Office, Headquarters.	Deputy Postmaster General.
Headquarters organizations.	Bureau or office head.
Mail equipment shops, Washington, D.C.	Assistant Postmaster General, Bureau of Facilities.
Mailbag depositories.	Do.
Mailbag repair cents & depositories.	Do.
Area supply centers.	Do.
Equipment Production Specialists.	Do.
U.S. stamped envelope agency.	Do.
Postal Data Centers.	Director, Office of Regional Administration.
Regional offices.	Do.
Inspection service field organizations.	Chief Postal Inspector.
Post offices.	Regional Director.

§ 747.2 Filing complaints.

(a) **Right to file.** The right to file complaints without restraint, interference, coercion or reprisal is recognized.

(b) **Who may file.** Any postal employee or qualified applicant for postal employment who believes he has been discriminated against because of race, color, religion, sex, or national origin may file a complaint. The complaint may be submitted by an authorized representative of the complainant and such authorization must be in writing. Organizations may file complaints of general discrimination unrelated to a specific complaint under the regulations in this part. (See § 747.5.)

(c) *Where to file.* Complaints may be filed with the Deputy Equal Employment Opportunity Officer, with the Equal Employment Opportunity Officer, or with the Civil Service Commission.

(d) *When to file.* Complaints must be submitted in writing by the complainant or his representative within 30 calendar days of the date of the action giving rise to the complaint or, if a personnel action, within 30 calendar days of its effective date, except that a complaint made in connection with an adverse action covered by section 746 and Appendix A of Chapter 7 of the Postal Manual shall be submitted in writing by the complainant or his representative not later than 15 calendar days after the adverse action has been effected.

(1) The Equal Employment Opportunity Officer or the Deputy Equal Employment Opportunity Officer shall extend the prescribed time limit for good cause shown by the complainant.

(2) A complaint concerned with a continuing discriminatory employment practice may be filed at any time.

(e) *What to file.* The complainant must file a written complaint, in duplicate, and must sign the complaint. This letter of complaint must contain the following information:

(1) Name and address of complainant.

(2) Position and/or PFS level.

(3) Specific action or situation complained of.

(4) Date of the alleged act of discrimination.

(5) Name and title of official responsible for the alleged act of discrimination.

(6) Type of discrimination that is alleged (specify whether race, color, religion, sex, or national origin).

(7) Brief statement of the facts which support complaint, or reasons the complainant has for believing discrimination exists.

§ 747.3 Presentation of complaint.

(a) *Complainant.* In presenting a complaint, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is a postal employee, he shall be on-the-clock while presenting his complaint, if he is otherwise in an active duty status. If the complainant is a postal employee and he designates another postal employee as his representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall be on-the-clock while presenting the complaint, if he is otherwise in an active duty status.

(b) *Investigation.*—(1) *Assignment of investigator.* The Equal Employment Opportunity Officer or the Deputy Equal Employment Opportunity Officer shall immediately assign a specially selected and trained hearing officer-investigator to conduct the investigation of the complaint.

(2) *Scope of investigation.* The investigation shall include a thorough review of the circumstances under which

the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. On completion of the investigation, the investigator shall submit the whole investigative file to the Deputy Equal Employment Opportunity Officer.

(3) *Investigative report.* The Deputy Equal Employment Opportunity Officer shall furnish management and the complainant and/or his representative a written summary which shall contain all the information in the investigation related to the resolution of the complaint.

§ 747.4 Settlements.

(a) *Informal settlement.* (1) Within 10 calendar days after receipt of the investigative report by the Deputy Equal Employment Opportunity Officer, he or his designee shall personally conduct an interview with the complainant and the installation head for the purpose of attempting an informal settlement. Informal settlements effected by a designee shall be totally binding on the Deputy Equal Employment Opportunity Officer. Hearing Officer-Investigators shall not be designated to conduct informal settlement interviews. The complainant and the installation head shall be provided a written summary of the investigation at least 5 calendar days prior to the interview.

(2) When an equal employment opportunity complaint is settled informally, the agreed upon settlement shall be reduced to writing, which shall include a statement that the complainant shall not be afforded the right to an oral hearing or further appeal, and shall be signed by the complainant and the Deputy Equal Employment Opportunity Officer or his designee. The Deputy Equal Employment Opportunity Officer will close out the case with a disposition report to the Equal Employment Opportunity Officer.

(3) When a complainant submits a written withdrawal of his complaint, the Deputy Equal Employment Opportunity Officer will close out the case with a disposition report to the Equal Employment Opportunity Officer.

(b) *Notification of right to an oral hearing.* (1) When the complaint is not settled informally, the complainant, at the time the attempt at informal settlement is made, shall be advised, in writing, that he may request an oral hearing, provided such request is submitted within ten (10) days from that date. The letter should set forth any stipulations agreed to during informal settlement and advise the complainant that if no hearing is requested, the complaint will be forwarded to the Equal Employment Opportunity Officer for a final decision. The complainant shall also be advised that the hearing officer who conducts the oral

hearing shall not be the same officer who made the investigation in his case.

(c) *When a hearing is requested.*—(1) *Scheduling hearing.* When a hearing is requested, the Equal Employment Opportunity Officer or the Deputy Equal Employment Opportunity Officer shall schedule a hearing at a convenient time and place, and notify all parties concerned.

(2) *Assignment of hearing officer.* The Equal Employment Opportunity Officer or the Deputy Equal Employment Opportunity Officer shall assign a specially selected and trained hearing officer to conduct the hearing.

(3) *Witnesses at the hearing.* The installation head shall produce any witnesses under his jurisdiction upon a showing satisfactory to the hearing officer of reasonable necessity therefor. Reasons for the denial of the appearance of employees as witnesses shall be documented in the record of the complaint. Any request for the attendance of necessary witnesses by the complainant shall be made in writing at least 10 days prior to the date of the hearing. Parties to the hearing shall have the right of confrontation and cross-examination as may be necessary to a development of the facts.

(4) *Prehearing conference.* Prior to the hearing, the hearing officer shall conduct a prehearing conference throughout which only the complainant and/or his representative, and management and/or his representative shall be present. At this conference the parties concerned shall have the opportunity to examine the complete complaint file which shall not contain any documents that have not been made available to the complainant. The hearing officer will determine the total scope of the hearing.

(5) *Conduct of hearing.* The hearing officer shall conduct the hearing so as to bring out pertinent facts, including the production of related documents and necessary witnesses. Strict rules of evidence shall not be applied, but the hearing officer shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policies or practices relevant to the complaint shall be received in evidence. All testimony at the hearing shall be given under oath or affirmation, and all witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal. Witnesses who are postal employees shall be rescheduled, if necessary, so as to be on-the-clock for the time they are to appear at the hearing.

(6) *Record of hearing.* The hearing shall be recorded and the complainant and/or his representative shall be given the opportunity to listen to the recording at the regional office. If a written transcript of the recording is desired, the complainant will be obliged to pay the cost. Under no circumstances will the recording discs be turned over to the complainant or to management officials. If complainant wishes to make a reproduction of an official recording discs be turned over to the complainant or to management officials. If complainant

wishes to make a reproduction of an official recording of a hearing by using a tape recorder or other recording device, he may do so at his own expense. Such reproductions may be made only at points when the official recording is in authorized postal custody and supervision. Reproductions, whether transcripts or recorded reproductions, are not official records. If a verbatim transcript is not requested, a full summary of the testimony shall be made by the hearing officer. The Deputy Equal Employment Opportunity Officer shall furnish the parties a copy of the summary. If either party does not agree with the summary, he may note and sign his exceptions which will become a part of the summary, provided they are submitted within five (5) days from receipt of the summary. The hearing officer shall make his findings and recommendations on the basis of the record before him and submit his findings and recommendations to the Deputy Equal Employment Opportunity Officer. The Deputy Equal Employment Opportunity Officer shall take any corrective action he deems necessary at any time during the processing of the discrimination complaint. The Deputy Equal Employment Opportunity Officer shall forward the complete complaint file and disposition report with his comments and recommendations to the Equal Employment Opportunity Officer, who will render the decision based on the total record.

(d) *When no hearing is requested.* If the complainant fails to request a hearing within 10 days after receipt of the notification of right to an oral hearing, the Deputy Equal Employment Opportunity Officer shall submit the complete complaint file and disposition report, with his comments and recommendations, to the Equal Employment Opportunity Officer, who will render the decision based on the total record.

(e) *Delay on part of complainant.* When the complainant fails to appear without good cause shown or fails within 15 days to furnish requested information or to otherwise process his complaint, the case may be closed.

(f) *Decision and appeal.*—(1) *By Equal Employment Opportunity Officer.* The Equal Employment Opportunity Officer will make the final decision for the Department and notify the complainant and the Deputy Equal Employment Opportunity Officer. The letter of decision shall contain a concise and accurate summary of the facts relied on in reaching the decision. The Equal Employment Opportunity Officer in rendering his written decision on the complaint, shall advise the complainant that if he is not satisfied with the decision, it may be appealed to the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415. If the complainant elects to appeal, the appeal must be submitted in writing within 15 days from receipt of the Equal Employment Opportunity Officer's decision, unless the Civil Service Commission waives this time limitation for good cause shown.

(2) *Complaint rejected or canceled.* When it is determined by the Deputy

Equal Employment Opportunity Officer that the complaint should be rejected because (i) it was not timely filed, or (ii) it was not within the purview of the Department's regulations; or to cancel the complaint (iii) because of the complainant's failure to prosecute the complaint, or (iv) because of the complainant's voluntary separation which is not related to his complaint, the complaint shall be forwarded immediately to the Equal Employment Opportunity Officer for his determination as to whether the complaint will be processed.

(3) *Decision to close complaint.* If it is decided to close the complaint, the Equal Employment Opportunity Officer will render the decision and advise the complainant of his right to appeal the decision to the Civil Service Commission. If the decision of the Equal Employment Opportunity Officer is other than rejection or cancellation, the complaint shall be remanded to the Deputy Equal Employment Opportunity Officer to be adjudicated in accordance with existing procedures.

(g) *Time limitation for processing complaints.* Within 60 days from receipt of a complaint by the Deputy Equal Employment Opportunity Officer, and when no hearing is held, the complaint shall be processed and the disposition report shall be submitted to the Civil Service Commission as required by paragraph (h) of this section. When the complainant requests a hearing, the complaint shall be processed within 90 days. When a complaint has not been resolved within these time limitations, the complainant may appeal to the Civil Service Commission for a review of the reasons for the delay in the processing of his complaint.

(h) *Report of disposition of complaint.*—(1) *By the Equal Employment Opportunity Officer.* Within 10 calendar days of the close of a complaint, the Equal Employment Opportunity Officer shall report to the Director, Bureau of Inspections, U.S. Civil Service Commission, Washington, D.C. 20415, the disposition of the complaint, whether the complaint was closed because of a rejection or cancellation of the complaint, or a decision on the merits of the complaint. For each closed complaint there shall be submitted a separate report, consisting of the following information:

(i) Name of the complainant (in the event of a group appeal, the name of one complainant selected to identify the group).

(ii) Title and grade of complainant's position or of the complainant's position selected to identify the group.

(iii) Date on which the complaint was received.

(iv) A description of the action, decision, or condition giving rise to the complaint.

(v) Nature of the complaint (kind of discrimination alleged).

(vi) Name and location of the employing activity.

(vii) Nature of the closing action (including the reason for any rejection or cancellation) and a description of any corrective action resulting from the complaint.

(viii) Date of the closing action.

(ix) Name and title of the official taking the closing action.

(x) A statement as to whether or not the complainant has appealed the closing action to the Commission, when known.

(xi) As attachments to the report, a copy of the complaint, a description of any additional allegations of discrimination made during the investigation or hearing, a copy of the agency's notice of final action on the complaint.

(2) *By the Deputy Equal Employment Opportunity Officer.* The Deputy Equal Employment Opportunity Officer shall submit a disposition report on all cases, in duplicate, to the Equal Employment Opportunity Officer. For each closed complaint, a separate report shall be submitted, in duplicate, in the format outlined in subparagraph (1) of this paragraph.

(i) *Retention of regional complaint file.* After the Deputy Equal Employment Opportunity Officer has submitted his disposition report to the Equal Employment Opportunity Officer, the regional office retention file of the case shall be returned to the control clerk in the office of the Director, Industrial Relations Division.

§ 747.5 Organization or third party complaints.

(a) *Definition.* A complaint of general discrimination based on race, color, religion, sex, or national origin, filed by an individual, a group of individuals, or any organization, whether or not connected with the Department shall be accepted as a third party complaint. Third party complaints of discrimination are not to be related to a specific complaint. General allegations of discrimination which are related to a specific complaint, or allegations pertaining to the environment out of which the specific complaint arose, shall be processed as outlined in §§ 747.1 through 747.4(i).

(b) *Receipt and acceptance.* When a complaint of the nature described in this section is received by the Deputy Equal Employment Opportunity Officer, it shall immediately be forwarded to the Equal Employment Opportunity Officer for his determination as to how it shall be handled.

(c) *Disposition by Deputy Equal Employment Opportunity Officer.* When the complaint is remanded to the Deputy Equal Employment Opportunity Officer, he shall immediately initiate an investigation. After the investigation, the Deputy Equal Employment Opportunity Officer shall attempt to settle the complaint informally. When the complaint is settled informally, the procedures provided in § 747.4(a)(2) shall be followed. When the complaint is not settled informally, no hearing will be held. The Deputy Equal Employment Opportunity Officer will forward the complete file, along with his comments and recommendations, to the Equal Employment Opportunity Officer.

(d) *Decision of the Equal Employment Opportunity Officer.* Based on the total

record, the Equal Employment Opportunity Officer shall render a written decision, which shall be final and from which there is no further appeal.

(e) *Retention of regional complaint file.* After the Deputy Equal Employment Opportunity Officer has submitted his disposition report to the Equal Employment Opportunity Officer, the regional office retention file of the case shall be returned to the control clerk in the office of the Director, Industrial Relations Division.

§ 747.6 Equal employment opportunity complaints in conjunction with adverse action appeals filed with the Civil Service Commission.

(a) *Processing by the Department.* When an appellant alleges discrimination due to race, color, religion, sex or national origin in his adverse action appeal to the Civil Service Commission's Regional Office, Regional Directors in their capacity as Deputy Equal Employment Opportunity Officers will assign a Hearing Officer-Investigator to conduct the necessary investigation of the complaint. Upon completion of the investigation, the Deputy Equal Employment Opportunity Officer will furnish the Commission with a copy of the summary of investigation and finding of fact. No further action on the issue of discrimination is required.

(b) *Civil Service Commission.* The Civil Service Commission's Regional Office will process the appeal in the usual fashion and render a decision on the issues in the appeal, including the issue of discrimination. This decision will be appealable to the Commission's Board of Appeals and Review.

TIMOTHY J. MAY,
General Counsel.

MAY 14, 1968.

[F.R. Doc. 68-5945; Filed, May 17, 1968; 8:47 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

PART 1-12—LABOR

Administrative Procedures

This amendment of the Federal Procurement Regulations provides for the use of the combination letter and poster (Department of Labor Form SC-1) and notices (Standard Forms 98 and 99) which have been prescribed by the Department of Labor in connection with the administration of the Service Contract Act of 1965. It also provides for the attachment of applicable minimum wage determinations and fringe benefit specifications to invitations for bids, requests for proposals, contracts, and Form SC-1, where the Act is involved.

The table of contents for Part 1-12 is amended to change the caption for § 1-12.905-1 as follows:

Sec.
1-12.905-1 Responsibilities of contracting officers.

Subpart 1-12.9—Service Contract Act of 1965

1. Section 1-12.905-1 is revised to read as follows:

§ 1-12.905-1 Responsibilities of contracting officers.

(a) The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract relating to the Act and of his responsibilities thereunder. Unless it is clear that the contractor is fully informed, the contractor shall be so informed by conference, letter, or other suitable method, as soon as possible after award of the contract.

(b) The contracting officer shall furnish the contractor with Department of Labor Form SC-1 (combination letter and poster) at the time of contract award and shall ensure that the form is in the possession of the contractor for appropriate posting prior to performance of the contract. The form advises employees of their benefits under the Act and satisfies the notice requirements in paragraph (d) of the contract clause prescribed in § 1-12.904-1. Contractors are required to post the form at a prominent and accessible place at the work-site. Supplies of the form may be obtained from the Wage and Hour and Public Contracts Divisions, Department of Labor, Washington, D.C. 20210.

(c) If the Department of Labor register of minimum wage determinations and fringe benefit specifications or a communication from the Administrator, Wage and Hour and Public Contracts Divisions, Department of Labor (see § 1-12.905-4), provides a determination or specification applicable to any class of service employees who will be working on the contract, the contracting officer shall attach such applicable determinations or specifications to the invitation for bids, request for proposals, contract, and Form SC-1.

2. Section 1-12.905-3 is revised to read as follows:

§ 1-12.905-3 Notice of intention to make a service contract.

Not less than 30 days prior to any invitation for bids or the commencement of negotiations for any contract exceeding \$2,500 which may be subject to the Act (or for any contract of an indefinite amount, unless the contracting agency has definite knowledge that it will not exceed \$2,500 in any event), or as soon as practicable where exceptional circumstances prevent such notice within 30 days, the contracting agency shall file standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice, with the Administrator, Wage and Hour and Public Contracts Divisions, Department of Labor, Washington,

D.C. 20210, which shall include the following:

(a) A description of the service to be performed;

(b) The place of performance, if known, and the fact that the place of performance is unknown if that is the case;

(c) The date bids will be invited or negotiations commenced;

(d) Each class of service employees likely to be employed in the performance of the contract;

(e) The minimum wages and fringe benefits to be included in the contract taken from the currently effective minimum wage determinations and fringe benefit specifications included in the Department of Labor register of wage determinations and fringe benefits (see § 1-12.905-2); and

(f) The number of persons to be employed and the minimum wages and fringe benefits to be paid or furnished for each class of service employees listed under § 1-12.905-3(d), but for whom no minimum wages have been established and reported under § 1-12.905-3(e), as best the agency is able to discover or estimate such data from the current contract providing such services or from other sources.

An original and three copies of the form shall be submitted, together with any attachments necessary, to the address indicated on the form. Detailed completion instructions are printed on the back of the form. The "Response" portion of the original of the form will be completed by the Wage and Hour and Public Contracts Division and returned to the contracting agency, advising the agency of any determination of minimum monetary wages and fringe benefits applicable to the contract. Supplies of Standard Form 98 are available in all GSA supply depots under stock number 7540-926-8972.

3. Section 1-12.905-6 is revised to read as follows:

§ 1-12.905-6 Notice of award.

Whenever a Federal agency awards a contract which may be in excess of \$2,500 subject to the Act, the agency shall notify the Administrator, Wage and Hour and Public Contracts Divisions, Department of Labor, Washington, D.C. 20210, of the award by forwarding to him an original and one copy of Standard Form 99, Notice of Award of Contract. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act of 1965;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services), and (2) enter the heading "Detailed Description," and following this entry set forth

a detailed description of the services to be performed; and

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed \$-----."

Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540-634-4049.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective upon publication in the *FEDERAL REGISTER*.

Dated: May 14, 1968.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 68-5967; Filed, May 17, 1968;
8:49 a.m.]

Chapter 5—General Services Administration

MISCELLANEOUS AMENDMENTS TO CHAPTER

These amendments to the General Services Administration Procurement Regulations (1) establish requirements for obtaining information concerning the responsibility of prospective contractors by personnel of the General Services Administration and (2) correct obsolete organizational references.

PART 5-1—GENERAL

Subpart 5-1.3—General Policies

Section 5-1.310 is amended as follows:

§ 5-1.310-6 Determination of responsibility.

(a) When a bid or offer is rejected because of a determination by the contracting officer that the prospective contractor does not qualify as responsible, the contracting officer shall notify the prospective contractor by letter, setting forth the reasons for the rejection. This will provide opportunity, where applicable, for the correction of the offending practices prior to future offerings. The contracting officer shall send a copy of the letter, together with a copy of the determination to reject, to the Office of Management Investigations and Review, OAD, through the head of the procuring activity. He shall include a recommendation that the rejected bidder be or not be placed on the Review List in accordance with § 5-1.310-50. The head of the procuring activity shall determine the appropriate action required and so advise the Office of Management Investigations and Review, OAD.

(b) The contracting officer shall include in the contract file, in a manner similar to that prescribed in § 1-2.407-7, the reasons for the rejection of a bid or offer.

(c) For determination of responsibility in connection with equal opportunity in employment, see § 5-12.805-50.

(d) Advice and assistance should be obtained from appropriate legal counsel or credit and finance activity in arriving at a determination as to whether from legal or financial considerations a bidder qualifies as responsible under standards set forth in § 1-1.310-5.

§ 5-1.310-7 Information regarding responsibility.

(a) For any contract of \$50,000 or more, or which involves Government financial assistance, the contracting officer shall obtain a financial responsibility report regarding the prospective contractor involved from the appropriate credit and finance activity, except with respect to transportation contracts with regulated common carriers under Government bills of lading which are not subject to special terms, conditions, or specifications. Unless notified otherwise, the information furnished shall be considered current for a reasonable length of time for use in connection with subsequent bids of that prospective contractor. The request for a financial responsibility report shall be submitted, in duplicate, on GSA form 894, Financial Responsibility—Inquiry and Reply (illustrated at § 5-16.950-894).

(b) Contracting officers shall request assistance of appropriate organizational elements of GSA when sufficient information is not readily available upon which determinations of responsibility can be based. Necessary information regarding the proposed contract shall be furnished with the request for such assistance. The contracting officer shall consider the information and recommendations received in making his determination. Following the determination, the contracting officer shall include such data in the appropriate procurement file.

(1) Requests directed to the appropriate credit and finance activity shall be submitted as in paragraph (a) of this section.

(2) Requests may be directed to the Office of Design and Construction or to the regional Design and Construction Division, PBS, to the Quality Control Division, FSS, or to the Inspection Division, PMDS, as appropriate, for examination of a prospective contractor's production facilities as to suitability, capacity, organization, previous performance, and his technical ability and experience in the type of production or services required to perform the contract. Examinations shall be conducted without delay, and reports rendered to the contracting officer with recommendations as to whether the prospective contractor can reasonably be expected to perform the contract. Reports of examinations made by the Quality Control Division shall be rendered on GSA Form 353, Plant Facilities Report, when applicable (illustrated at § 5-16.950-353).

§ 5-1.310-10 Performance records.

Performance records shall include, by contractor, information or data relative to performance, integrity, or judgment. These records shall be consulted by contracting officers of the procuring

activity in determining whether prospective contractors meet the responsibility standards prescribed by § 1-1.310-5.

§ 5-1.310-50 Review List of Bidders.

The Review List of Bidders is a list of firms or individuals who, because of questionable responsibility, require extraordinary consideration before award of contracts and, if awards are made, require exceptional treatment with respect to contract administration. The List is established as the medium for notification (within GSA) that information exists, pertaining to the listed firms or individuals, which is sufficient to warrant timely inquiry or surveillance because of questionable responsibility, but is not sufficient in and of itself to warrant debarment.

(a) **Establishment and maintenance of the List.** (1) The Office of Management Investigations and Review, OAD, shall establish and maintain the List in accordance with this § 5-1.310-50, and arrange for the reproduction and distribution of the List. The List shall be marked "For Official Use Only," and private parties shall not be apprised of it in any way whatsoever.

(2) Distribution of copies of the List shall be made to all GSA officials or employees whose duties require access to the List as determined by the Head of each Service or Staff Office. Copies of the List may be furnished to officials and employees of other Federal agencies by the Office of Management Investigations and Review, OAD.

(b) **Bases for inclusion in the List.** The names of firms or individuals shall be included in the List under the following circumstances; however, no firm or individual named in the GSA Debarred Bidders List shall, at the same time, be included in the Review List of Bidders.

(1) When, after recommendation by the Office of Management Investigations and Review, OAD, it is determined by the head of a procuring activity that a firm or individual is of questionable responsibility within the purview of § 1-1.310; or

(2) When a bid is rejected because of a determination by the contracting officer that the bidder does not qualify as responsible and the Office of Management Investigations and Review, OAD, has been notified in accordance with § 5-1.310-6(a); or

(3) When, before investigation of the circumstances of a particular case, the Head of a procuring Service or Staff Office (or his designee) so requests, if such action has the concurrence of the appropriate legal counsel and the Office of Management Investigations and Review, OAD.

(c) **Investigations, evaluations, and determinations.** (1) The Office of Management Investigations and Review, OAD, shall collect and investigate information developed within GSA or by other agencies to determine whether such information falls within the purview of § 1-1.310. When a procuring activity has reason to doubt the responsibility of

a prospective contractor, a request for investigation shall be forwarded to the Office of Management Investigations and Review, OAD, with a statement of the pertinent circumstances.

(2) The Office of Management Investigations and Review, OAD, shall evaluate the information developed as a result of subparagraph (1) of this paragraph. If this evaluation indicates adequate justification, the Office of Management Investigations and Review, OAD, shall recommend to the head of the appropriate procuring activity that the firm or individual be included in the List. The Office of Management Investigations and Review, OAD, files compiled in support of such recommendations may be reviewed by the procuring activity upon request.

(3) The head of the procuring activity, after consultation with appropriate legal counsel (and Office of Management Investigations and Review, OAD, representatives, if necessary) shall determine whether the facts warrant placing the prospective contractor on the List and so notify the Office of Management Investigations and Review, OAD.

(d) *Removal from the List.* (1) Removal of a firm or individual from the List may be accomplished at any time when it is determined that sufficient reason no longer exists for retention. When it is so determined, a recommendation for removal shall be forwarded, through channels, to the Office of Management Investigations and Review, OAD, for coordination, or the Office of Management Investigations and Review, OAD, may initiate the recommendation. In either case, the Office of Management Investigations and Review, OAD, shall coordinate the recommendation, supported by all new evidence received, with the office that originally approved the listing. The head of that procuring activity, after consultation with appropriate legal counsel, shall request the Office of Management Investigations and Review, OAD to delete or retain the firm or individual in the List.

(2) The List shall be screened periodically (at least every 2 years) by the Office of Management Investigations and Review, OAD. Firms and individuals listed 12 months or more prior to the date of screening shall be reported to the initiating office with a recommendation for removal or retention based on the seriousness of the original cause for listing and the presence or absence of derogatory information received subsequent to the determination for inclusion in the List. These firms and individuals shall be retained in the List unless the initiating office, within 30 working days of the reporting date, requests removal.

(e) *Treatment to be accorded listed firms or individuals.* (1) The inclusion of a firm or individual in the List must not itself be interpreted to mean that the listed firm or individual will not be given an opportunity to bid or quote on a proposed procurement; that negotiations cannot be carried on with that firm or individual; or that an award cannot be made to such firm or individual.

(2) No contract shall be awarded to a listed firm or individual until the contracting officer determines the bidder to be responsible, based on all available information. Inquiry shall be made of such elements of the Central Office and the regional office as the contracting officer may see fit, to support such a determination or to support rejection for failure to qualify as a responsible prospective contractor. The extent or scope of the inquiry is for determination by the contracting officer.

(3) If rejection is made, the contracting officer shall comply with § 5-1.310-6 (a). The List shall not be cited as a reason for or factor contributing to the rejection.

(4) If award is made to a listed firm or individual, the contracting officer shall, as appropriate, solicit the aid of such elements of GSA as may be of assistance in maintaining close surveillance over the performance of the contract. If derogatory information is developed during the life of the contract, the information shall be transmitted to the contracting officer and the appropriate Office of Management Investigations and Review, OAD, representative.

PART 5-12—LABOR

Subpart 5-12.8—Equal Opportunity in Employment

Section 5-12.805-1 is amended as follows:

§ 5-12.805-1 Duties and responsibilities.

(a) *Director, Civil Rights Program Policy Staff, Office of the Administrator.* The Director is immediately responsible for the implementation of the GSA Equal Employment Opportunity Program. All communications regarding any phase of the Program which are received from or require transmittal to the Office of Federal Contract Compliance, Department of Labor, the Equal Employment Opportunity Commission, or the Department of Justice, shall be coordinated with or handled by the Director.

(b) *Civil Rights Program Policy Staff, Office of the Administrator.* The Staff shall be responsible for (1) administering the overall GSA Equal Employment Opportunity Program, including contracts compliance; (2) directing and coordinating the GSA Equal Employment Opportunity Program; and (3) developing and recommending policies, guidelines, and procedures to the Administrator which are necessary for carrying out GSA's responsibilities under the Equal Employment Opportunity Program.

(c) *Office of Management Investigations and Review, OAD.* The Office shall be responsible for the overall administration of the GSA Equal Employment Opportunity Compliance Review and Inspection Program in accordance with the provisions of this Subpart 5-12.8, Subpart 1-12.8, and the instructions of the Director, Civil Rights Program Policy Staff.

(d) *Other procurement officials and program managers.* The personnel assigned these duties shall be responsible for taking all steps and precautions which are appropriate and necessary to ensure contractor compliance with the GSA Equal Employment Opportunity Program as set forth in this Subpart 5-12.8 and Subpart 1-12.8, and the instructions of the Director, Civil Rights Program Policy Staff.

(e) *Contracts Compliance Officer.* The Officer is the Director, Civil Rights Program Policy Staff, Office of the Administrator.

(f) *Deputy Contracts Compliance Officers.* The Deputy Contracts Compliance Officers are the Regional Counsels in the GSA regional offices. These officers shall be responsible for implementation of the GSA Equal Employment Opportunity Program in their offices in accordance with this Subpart 5-12.8, Subpart 1-12.8, and the instructions of the Civil Rights Program Policy Staff. In addition, these officers shall be responsible for providing assistance in their regions to the Regional Administrator, contracting officers, and field personnel of the Office of Management Investigations and Review, OAD, in the execution of their responsibilities.

(g) *Civil Rights Program Coordinators.* The coordinators, designated by the Heads of Central Office Services and Staff Offices, shall be the liaison between the Central Office contracting officers of their procuring activities and the Civil Rights Program Policy Staff and the Office of Management Investigations and Review, OAD, regarding implementation of the GSA Equal Employment Opportunity Program and related procedures.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. These regulations are effective upon publication in the FEDERAL REGISTER.

Dated: May 13, 1968.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 68-5944; Filed, May 17, 1968; 8:47 a.m.]

Chapter 9—Atomic Energy Commission

PART 9-15—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 9-15.50—Cost Principles and Procedures

MISCELLANEOUS AMENDMENTS

These amendments add guidance on the application of AEC's basic cost principles to relocation costs.

1. In § 9-15.5006, *Advance understandings on particular cost items*, the introductory text of paragraph (i) is revised to read as follows:

§ 9-15.5006 *Advance understandings on particular cost items.*

(1) Employee compensation, travel including relocation costs, and other personnel costs. AEC utilizes two basic methods of achieving and recording understandings with contractors as to the allowability of employee compensation, travel, and other personnel costs: Negotiation of a personnel appendix to the contract which sets forth the policies, programs, and schedules which are accepted as the basis for determining the allowability of costs; or reviewing and reaching agreement on established policies, programs, and schedules (and any changes thereto during the contract term) applicable to the contractor's private operations which are acceptable for contract work and which will be consistently followed throughout the contractor's organization. Generally, a personnel appendix to the contract is utilized in contracts for work in Government-owned facilities, and in other contract situations when one or more of the following circumstances exist: When policies, programs, and schedules are established specifically for contract work; when the contractor's work is predominantly or exclusively made up of negotiated Government contract work; when contract work is so different from the organization's private work that existing established policies, programs, and schedules cannot reasonably be extended to and consistently applied on contract work; or, when established policies, programs, and schedules proposed for contract work are not sufficiently definitive to permit a clear advance mutual understanding of allowable costs and to provide a basis for audit. Field Office Managers are authorized to select the alternative method of achieving and recording advance understanding that they find most appropriate after considering the facts of the particular contract situation. In the case of contracts with an estimated annual expenditure of less than \$250,000 for performance of work not located at Government-owned facilities, Field Office Managers may waive advance understandings in the area of compensation, travel, and other personnel costs where they believe that the circumstances do not warrant their use. Employee compensation, travel, and other personnel costs as used in this paragraph include:

2. The following section is added to § 9-15.5010, *Application of basic principles to particular situations*:

§ 9-15.5010-20 Relocation costs.

(a) Relocation costs, for the purpose of this Subpart 9-15.50, are costs incident to the permanent change of duty assignment of an existing employee for a period of no less than 12 months or upon recruitment of a new employee.

(b) Relocation costs may include, but are not limited to, the type of costs covered in paragraphs (c) and (d) of this section and are allowable to the extent therein set forth provided:

(1) The move is for the benefit of the employer;

(2) Reimbursement is in accordance with an established policy or practice consistently followed by the employer in

connection with his private operations, and such policy or practice is designed to motivate employees to relocate promptly and economically;

(3) The costs are not otherwise unallowable under the provisions of the contract or any other paragraph of this Subpart 9-15.50; and,

(4) The amounts to be reimbursed shall not exceed the actual (or reasonably estimated) expenses.

(c) Allowable relocation costs include the following types of expenses:

(1) Travel expenses, including costs of transportation, lodging, subsistence, and reasonable incidental expenses of the employee and members of his immediate family and transportation of his household and personal effects to the new location;

(2) Expenses incurred incident to locating a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging and subsistence;

(i) The period for incurrence of costs of the type covered in this subparagraph (2) shall be kept to the minimum number of days necessary under the circumstances but shall not, in any event, exceed a cumulative total of 30 days including advance trip and travel time.

(3) Other necessary and reasonable expenses normally incident to relocation, such as costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchase of insurance against damages to or loss of personal property.

(i) Costs of canceling an unexpired lease under this subparagraph (3) shall not exceed three times the monthly rental.

(d) The following types of relocation expenses are allowable but the combined total of costs covered in subparagraphs (1) and (2) of this paragraph shall not exceed 8 percent of the sales price of the property sold:

(1) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.) incident to the sale of the actual residence owned at old location by the employee when notified of the transfer;

(2) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date or lease date of new permanent residence.

(e) Relocation costs incurred incident to recruitment of new employees are subject to this § 9-15.5010-20 except that expenses of the type covered in paragraphs (c) (3) and (d) (1) and (2) of this section are allowable only in connection with the relocation of existing employees and are not allowable for newly recruited employees. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allowable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the contractor shall be required to refund or credit such relocation costs to the Government.

(f) Relocation costs of the following types are unallowable whether incurred by the employee or by the employer, except to the extent such costs are specifically allowable in the contract:

(1) Loss on sale of home;

(2) Acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.);

(3) Continuing mortgage principal and interest payments on residence being sold;

(4) Payments for employee income taxes incident to reimbursed relocation costs.

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

Effective date. These amendments are effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 10th day of May 1968.

For the U.S. Atomic Energy Commission.

ROBERT A. KOHLER,
Acting Director,
Division of Contracts.

[F.R. Doc. 68-5920; Filed, May 17, 1968; 8:45 a.m.]

Chapter 14—Department of the Interior

CONTRACT CLAUSES, TERMINATION OF CONTRACTS, BONDS AND INSURANCE, FEDERAL, STATE, AND LOCAL TAXES

Pursuant to the authority of the Secretary of the Interior, contained in 5 U.S.C. 22, Parts 14-7, 14-8, 14-10, and 14-11 of Chapter 14, Title 41 of the Code of Federal Regulations are hereby approved as set forth below.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the public rulemaking process. However, because these parts are largely a general statement of Departmental policy and internal procedure the rulemaking process will be waived and these parts will become effective upon publication in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

MAY 11, 1968.

PART 14-7—CONTRACT CLAUSES

Subpart 14-7.1—Fixed Price Supply Contracts

Sec.	Clauses.
14-7.101	Liquidated damages.
14-7.101-23	Ocean freight shipments—
14-7.153	use of American-flag vessels.

Subpart 14-7.6—Fixed Price Construction Contracts

14-7.602-50	Additional contract clauses.
14-7.602-50(1)	Listing of subcontractors.

Sec. 14-7.602-50(2)	Bonding of subcontractor.
14-7.602-50(3)	Protests.
14-7.602-50(4)	Requirements for execution of surety bonds.
14-7.602-50(5)	Safety and health.
14-7.602-50(6) (a)	North Carolina sales and use tax.
14-7.602-50(6) (b)	Texas limited sales, excise, and use tax.
14-7.602-50(6) (c)	Nebraska sales and use tax.
14-7.602-50(7)	Preference to local residents.

AUTHORITY: The provisions of this Part 14-7 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 14-7.1—Fixed Price Supply Contracts

§ 14-7.101 Clauses.

§ 14-7.101-23 Liquidated damages.

In connection with the use of a clause for liquidated damages, the bureaus and offices should, where appropriate, provide for the contingency of damages in an amount sufficient to protect the interests of the Government and without incurring the hazard of having damages declared uncollectible as constituting a penalty.

§ 14-7.153 Ocean freight shipments—use of American-flag vessels.

It is the policy of Interior to encourage and foster the American Merchant Marine. Pursuant to the provisions of section 901(b) of the Merchant Marine Act of 1936 (46 U.S.C. 1241) invitations for bids and requests for proposals shall contain the following provision:

U.S.-FLAG VESSEL PROVISION

The Contractor agrees to ship on privately owned U.S.-flag commercial vessels at least 50 per centum of the gross tonnage of any equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels. Pursuant to section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. sec. 1241 (b)), the Secretary or his duly authorized representative may permit shipment in a manner other than that required by this provision upon the basis of evidence furnished by the Contractor that U.S.-flag commercial vessels are not available at fair and reasonable rates for U.S.-flag commercial vessels. The Contractor will be required to certify compliance with this requirement prior to final payment.

Subpart 14-7.6—Fixed-Price Construction Contracts

§ 14-7.602-50 Additional contract clauses.

The following clauses are prescribed for use, as indicated, in fixed price construction contracts.

§ 14-7.602-50(1) Listing of subcontractors.

(a) All contracts, entered into by negotiation or formal advertising, for building construction and alteration work to be performed in the United States and estimated to cost in excess of \$150,000 and involving the building trades subcontracting activities, shall require each bidder to submit with his bid

the name and address of each subcontractor (or his own firm when he will perform the work) to whom the prospective contractor purposes to subcontract any of the categories of work listed on an Attachment to the Bid Form, SF 21 titled "List of Subcontractors."¹

(b) The subcontractor listing shall include such building trades subcontracting activities as plumbing, heating, ventilating, air conditioning, masonry, elevators, electrical work, and other appropriate categories designated by the contracting officer, when the estimated cost of each of those categories is equal to or in excess of 2 percent of the total estimated cost of the entire project. Such list of selected categories of work may also contain categories of an estimated value of less than 2 percent when, in the judgment of the contracting bureau or office, such listing is appropriate to protect the interest of the classes of subcontractors eligible to bid on such categories. The list of work categories will be included as part of the Bid Form.

(c) Contracting officers shall determine the work categories for which subcontractors' names are to be submitted consistent with the above policy. The list of categories of work will be included as an Attachment to the Bid Form, SF 21.

(d) The requirement to list subcontractors may be excluded when it would be clearly inappropriate, for example, if the invitation involves work of only one category. Determinations to exempt from the requirement shall be made by the contracting officer and shall be documented and the record retained in the contract file. There is no authority in the contracting bureau, office or officer to require listing of subcontractors as to projects which do not exceed \$150,000.

(e) Nothing in this directive shall be interpreted to require the listing, at any time, of any subcontractor below the first tier. However, in order to provide protection to subcontractors below the first tier and to suppliers and labor, each bureau and office is hereby authorized, through its contracting officers and in their discretion, to require first tier subcontractors to provide payment bonds to the prime contractor.

(f) The contracting officer may permit substitution of an subcontractor for one named in a bid pursuant to the Listing of Subcontractors provision in unusual situations, upon submission by the contractor or bidder of a complete justification therefor. The term "unusual situations" includes (but is not limited to) a subcontractor's—

- (1) Death or physical disability, if the named subcontractor is an individual.
- (2) Dissolution, if a corporation or partnership.
- (3) Bankruptcy.
- (4) Inability to furnish a reasonable performance and payment bond.
- (5) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (6) Failure or inability to comply with a requirement of law applicable to con-

¹ Attachment filed as part of the original document.

tractors, subcontractors, or construction, alteration, or repair projects.

(7) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the contractor or bidder prior to the latter's submission of his bid, but only where the contracting officer can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder obtained, prior to bidding, an enforceable commitment from the subcontractor involved.

(8) Failure to meet any criteria of responsibility set out in § 1-1.310-5, but only when the contracting officer, in the exercise of sound discretion, finds that substitution for this cause would be in the best interests of the Government (i.e., that it would not be prejudicial to the rights of other bidders and that the contractor or bidder has not attempted to circumvent the restraint on bid shopping by listing a nonresponsible subcontractor in order to gain an opportunity to bid shop prior to making the requested substitution).

(9) Failure to meet the qualifications requirements of an applicable Specialist or Competency of Bidder clause, but only when the contracting officer, in the exercise of sound discretion, after discussion with the contractor or bidder and, if appropriate, the named subcontractor, finds that substitution for this cause would be in the best interests of the Government as specified in subparagraph (8) of this paragraph.

Where the contracting officer ascertains that a proposed substitution is justified, the substitution shall be authorized at no increase in the bid or contract price, or, if the proposed substitute offers the contractor or bidder a lower price than the named subcontractor, at a reduction in the bid or contract price.

(g) The clause titled "Listing of Subcontractors" set forth below shall be inserted in the contract at an appropriate location.

LISTING OF SUBCONTRACTORS

(a) For each of the categories of work contained in the list included as an attachment of the Bid Form, SF 21, the bidder shall submit the name and address of the firm to whom he proposes to subcontract the work to be performed on the site. Failure to submit the list by the time set for bid opening shall cause the bid to be considered nonresponsive except in accordance with Instruction No. 7 of the Instructions to Bidders (Standard Form 22). Except as otherwise provided herein, the successful bidder agrees that he will not have any of the listed categories of work involved in the performance of this contract performed by any subcontractor other than the subcontractor named for the performance of such work.

(b) The term "subcontractor" for the purposes of this requirement shall mean an individual or firm who performs active duties on the work site, involving (1) construction, (2) fabrication and/or installation of materials or items of equipment in connection with one or more of the categories of work contained in the list of subcontractors included as part of the Bid Form and shall not

include suppliers unless the supplier and installer are one individual or firm by reason of construction practice.

(c) The bidder shall list himself for each of those listed categories of work which he intends to perform. In such instances all personnel performing such work shall be carried on his own payroll. Equipment may be self-owned or leased. If more than one subcontractor will perform a single category of work, the portion to be performed by each shall be specified.

(d) Nothing contained in this clause shall be construed as changing any provisions in the contract requiring the contractor to perform work with his own forces.

(e) The contractor shall be responsible for all work performed by subcontractors.

(f) No additions to or substitutions for the firms named will be permitted except in unusual situations and then only upon the submission in writing to the Contracting Officer of a complete justification therefor and receipt of the Contracting Officer's written approval. In the event the Contracting Officer finds that substitution is not justified, the Contractor's failure or refusal to proceed with the work by or through the named subcontractor shall be grounds for termination of the contract under the provisions of Clause 5 of the General Provisions.

(g) Notwithstanding any of the provisions of this clause, the Contracting Officer shall have authority to disapprove or reject the employment of any subcontractor he has determined nonresponsible. He shall have the right to require any information and supporting evidence he may deem relevant and necessary in connection with the approval or disapproval of a request for substitution and the appropriate adjustment of the contract price in the event substitution is approved, including but not limited to certified copies of the original worksheets used in the preparation of the bid on the prime contract, certified copies of the offers submitted to the successful bidder by the named subcontractor and the proposed substitute, and affidavits as to the circumstances relating to the request for substitution or the estimated cost of performance by any subcontractor named or proposed as substitute. The Contractor's failure or refusal to proceed with the work by or through a named subcontractor after failing or refusing for any unreasonable period of time to furnish information and supporting evidence as required by the Contracting Officer in connection with a request for approval for a substitution shall be grounds for termination under the provisions of Clause 5 of the General Provisions. Imposition of any requirements under this subparagraph shall not give rise to any cause of action against the Government by the successful bidder or by any subcontractor engaged or proposed to be engaged hereunder.

(h) Nothing contained in this clause shall in itself be construed to create any contract or property rights in the successful bidder or any subcontractor.

(i) In the event the bidder fails in connection with this bid (1) to identify the subcontractors as required by subparagraph (a), or (2) to comply with subparagraph (c) if the bidder himself intends to perform one or more listed categories of work, the bid will be rejected as nonresponsive to the invitation. Care should be taken to avoid omitting an entry of a name and address in each space opposite a designation of a category listed in the Attachment to Bid Form, SF 21.

(j) To promote the objectives of the foregoing provisions and to assure the timely receipt of accurate bids, the bidder is requested to urge all subcontractors intending to submit a proposal for work involved in the project to submit to all bidders to whom they intend to bid a written proposal (or written abstract) with or without price, outlining

in detail the specific sections of the specifications to be included in their work as well as any exceptions or exclusions therefrom. It is suggested that such written proposal be submitted to the bidder at least 48 hours in advance of the bid opening.

§ 14-7.602-50(2) Bonding of subcontractor.

The following clause may be used in fixed price construction contracts using Standard Forms 23: Construction Contract, and 23-A: General Provisions (Construction Contract).

BONDING OF SUBCONTRACTORS

(a) The prime contractor shall be responsible to assure that all work at the jobsite which is subcontracted under these specifications shall be performed only by reliable and financially responsible subcontractors.

(b) For the purposes of this paragraph, the term "subcontractor" shall mean every party to whom a part of the contract may be sublet to perform construction, alteration, or repair work on the jobsite regardless of the tier in the chain of subcontractual relationships. The term "subcontractor" does not include suppliers or others not actually performing work at the jobsite.

(c) Except for subcontracts of \$2,000 or less, the prime contractor shall require every subcontractor of whatever tier, as evidence of his reliability and financial responsibility, to furnish a payment bond in form and with a responsible surety thereon acceptable to the prime contractor in a penal sum of not less than 50 percent of the subcontract price to assure payment to all persons supplying labor, materials, or rental equipment to such subcontractor for either incorporation or consumption in the work covered by these specifications or in its performance.

(d) The obligee under the payment bond shall be the party who has let the subcontract. The bond shall give a right of action to those persons supplying such labor, materials, or rental equipment due to loss caused by the nonpayment of any and all moneys owing on account thereof: *Provided however*, That written notice of such indebtedness is furnished to the prime contractor, the principal, and surety within 90 days, and suit therefor is initiated within 1 year, both periods to commence on the day on which the last of the labor, materials, or rental equipment were performed or furnished.

(e) At the time the prime contractor submits a copy of each subcontract as required under the Labor Standards Provisions, he shall also furnish to the contracting officer a copy of the payment bond.

(f) Nothing contained in this paragraph shall create any contractual relationship between any subcontractor and the Government.

§ 14-7.602-50(3) Protests.

The following clause may be used in fixed price construction contracts using Standard Forms 23—Construction Contract, and 23-A—General Provisions (Construction Contract).

PROTESTS

If the contractor considers any work demanded of him to be outside of the requirements of the contract, or considers any ruling of the contracting officer or of the inspectors to be unfair, he shall immediately upon such work being demanded or such ruling being made, ask, in writing, for written instructions or decisions, whereupon he shall proceed without delay to perform the work or to conform to the ruling, and within thirty (30) calendar days after date

of receipt of the written instructions or decision (unless the contracting officer shall grant a further period of time prior to commencement of the work affected) he shall file a written protest with the contracting officer, stating clearly and in detail the basis of his protest. Except for such protests as are made of record in the manner herein specified and within the time limit stated, the ruling, instructions, or decisions of the contracting officer shall be final and conclusive. Instructions and/or decisions of the contracting officer contained in letters transmitting drawings to the contractor shall be considered as written instructions or decisions subject to protest as herein provided.

§ 14-7.602-50(4) Requirements for execution of surety bonds.

The following clause shall be used in fixed price construction contracts when the estimated cost of the construction is in excess of \$2,000.

REQUIREMENTS FOR EXECUTION OF SURETY BONDS

Each surety company bond (bid, performance, payment) which purports to have been executed by an agent or attorney-in-fact, for the corporate surety, is required to have submitted with it a power of attorney to the signatory agent or attorney-in-fact, and executed by the corporate surety upon a date reasonably proximate to the date of the bond. Such power of attorney shall in each instance be retained with the bond.

§ 14-7.602-50(5) Safety and health.

(a) In the interest of uniformity the heads of bureaus and offices shall require the inclusion in every construction contract a safety and health clause similar to the one given below, containing as a minimum those requirements. Insert in the blank space of the clause the title of (1) the bureaus' and offices' own approved construction safety manual, (2) "Safety Requirements for Construction by Contract" of the Bureau of Reclamation, or (3) "Manual of Accident Prevention in Construction" (latest revised edition) of the Associated General Contractors of America, Incorporated.

(b) Additional safety requirements may be added to cover special circumstances.

(c) The clause below is prescribed for use in fixed price construction contracts.

SAFETY AND HEALTH

(a) In order to protect the life and health of employees and other person; prevent damage to property, materials, supplies, and equipment; and to avoid work interruptions, the contractor shall, in the performance of this contract, comply with the applicable provisions of Federal, State, and municipal safety, health, and sanitation laws and codes.

(b) The contractor shall also comply with all pertinent provisions of the (---) published by the (---) and amendments thereto. The contracting officer shall notify the contractor, in writing, of any noncompliance and indicate to the contractor the action to be taken. The contractor shall, after receipt of such notice, immediately correct the conditions to which attention has been directed. Such notice, when served on the contractor or his representative(s) at the site of the work, shall be deemed sufficient.

(c) If the contractor fails or refuses to comply promptly with requirements, the contracting officer may issue an order to suspend all or any part of the work. When

satisfactory corrective action is taken an order to resume work will be issued. No part of the time lost due to any such suspension order shall entitle the contractor to any extension of time for the performance of the contract or to excess costs or damages.

(d) The contractor shall maintain an accurate record of, and shall report to the contracting officer in the manner and on the forms prescribed by the contracting agency, all cases of death, occupational diseases, or traumatic injury arising out of or in the course of employment incident to the performance of work under the contract.

§ 14-7.602-50(6)(a) North Carolina sales and use tax.

The following clause is prescribed for use in all fixed price construction contracts when the work is to be performed in the State of North Carolina.

NORTH CAROLINA SALES AND USE TAX

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures, and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Federal Procurement Regulations, the contract price includes North Carolina sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulations, any North Carolina sales and use taxes paid by the contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below:

(i) The contractor shall furnish the contracting officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina sales and use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the North Carolina sales and use taxes paid thereon. Such statement shall also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of North Carolina sales or use tax paid thereon by the contractor. The contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(ii) The contractor shall obtain and furnish to the contracting officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next July 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next July 1, such certified statements shall be submitted on or before the 31st day of August of each year and shall cover taxes paid during the 12-month period which ended the preceding June 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period _____ to _____ (name of contractor or subcontractor), paid North Carolina sales and use taxes aggregating \$_____ with respect to building materials, supplies, fixtures, and equipment which have become a part of or annexed to a building or struc-

ture erected, altered, or repaired by (name of contractor) for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales and use taxes paid thereon are as set forth in the attachments hereto.

§ 14-7.602-50(6)(b) Texas limited sales, excise, and use tax.

The following clause is prescribed for use in all fixed price construction contracts when the work is to be performed in the State of Texas.

(a) This contract is a construction contract which contains separate amounts applicable to the performance of the services and the furnishing of materials (including materials furnished by subcontractors) as defined in the Texas Limited Sales, Excise and Use Tax Act of 1961, as amended.

(b) The contractor has or shall obtain a Limited Sales, Excise, or Use Tax Permit as provided by Texas law.

(c) If the contractor awards any subcontract under this contract, such subcontract (or subcontracts) shall also contain separate amounts applicable to the performance of services and the furnishing of materials.

(d) Notwithstanding any other provisions of this contract, the contract price does not include any amount for Texas Limited Sales, Excise, or Use Tax on materials to be incorporated by the contractor (or subcontractor) whose subcontract is prepared in accordance with (c) above into the structure or improvement to real estate. The Government agrees to furnish to the contractor appropriate tax exemption certificate or certificates.

(e) When the contract is modified, the modification shall, if appropriate, separate the amount applicable to material to be incorporated into the structure or improvement and the amount applicable to services and the other obligations of the contract.

The following language will be included in the Invitation for Bids (Standard Form 20) following the listing of estimated quantities:

TEXAS LIMITED SALES, EXCISE, AND USE TAX

(1) The contract to be awarded will be a construction contract which contains separate amounts applicable to the performance of the services and the furnishing of the materials, as defined in Article 20.01(T)(2), Title 122A, Revised Civil Statutes of Texas, and Ruling No. 9, Comptroller of Public Accounts, as amended on April 3, 1962. The person or firm to whom this contract is awarded must obtain a Limited Sales, Excise, and Use Tax Permit as provided by Texas law. Exemption from the Texas Limited Sales, Excise, and Use Tax on material to be incorporated by the contractor (and his subcontractors) into the structure or improvement to real estate may be secured under the terms of the cited law and regulation.

(2) The contract will be awarded in accordance with Paragraph 10 of the Instructions to Bidders on the basis of the total of the amount applicable to the material to be incorporated into the structure or improvement and the amount applicable to the performance of service and other obligations of the construction contract.

Lump-sum schedules will be separated into two lump-sum items, otherwise the following will be inserted in the bidding schedule after the "Total for Schedule":

The above Total for Schedule consists of separate amounts for (see paragraph _____):

- (1) Materials to be incorporated into the structure or improvement upon real estate. \$-----
- (2) Services and other obligations of Construction Contract. \$-----

§ 14-7.602-50(6)(c) Nebraska sales and use tax.

The following clause is prescribed for use in all fixed price construction contracts when the work is to be performed in the State of Nebraska.

(a) This contract is a construction contract which contains separate amounts applicable to the performance of the services and the furnishing of materials (including materials furnished by subcontractors) as defined in the Nebraska Revenue Act of 1967, as amended.

(b) The contractor has or shall obtain a Sales Tax Permit in accordance with "Rules and Regulations for Sales and Use Tax," published by the Nebraska State Tax Commissioner.

(c) If the contractor awards any subcontract under this contract, such subcontract (or subcontracts) shall also contain separate amounts applicable to the performance of services and the furnishing of materials.

(d) Notwithstanding any other provisions of this contract, the contract price does not include any amount for Nebraska Sales and Use Tax on materials to be incorporated by the contractor (or subcontractor) whose subcontract is prepared in accordance with (c) above into the structure or improvement upon real estate. The Government agrees to furnish to the contractor appropriate tax exemption certificate or certificates as requested.

(e) When the contract is modified, the modification shall, if appropriate, separate the amount applicable to material to be incorporated into the structure or improvement upon real estate and the amount applicable to labor, services and the other obligations of the contract.

Instructions to specification writers: The following language will be included in the Invitation for Bids (Standard Form 20) following the listing of estimated quantities:

NEBRASKA SALES AND USE TAX

(1) The contract to be awarded will be a construction contract which contains separate amounts applicable to the performance of the services and the furnishing of the materials, as defined in Rule TC-1-17 of "Rules and Regulations for Sales and Use Tax" published by the Nebraska State Tax Commissioner. The person or firm to whom this contract is awarded must obtain a Tax Permit as provided by the rules and regulations. Exemption from the Nebraska Sales and Use Tax on material to be incorporated by the contractor (and his subcontractors) into the structure or improvement to real estate may be secured under the terms of the Nebraska Revenue Act of 1967 and the cited regulations.

(2) The contract will be awarded in accordance with Paragraph 10 of the Instructions to Bidders on the basis of the total of the amount applicable to the material to be incorporated into the structure or improvement and the amount applicable to the performance of service and other obligation of the construction contract.

Lump-sum schedules will be separated into two lump-sum items, otherwise, the

following will be inserted in the bidding schedule after the "Total for Schedule":

The above Total for Schedule consists of separate amounts for (see paragraph -----):

- (1) Materials or equipment to be incorporated into the structure or improvement upon real estate ----- \$-----
- (2) Labor, services, and other obligations of the Construction Contract ----- \$-----

§ 14-7.602-50(7) Preference to local residents.

The following clause may be used in fixed price construction contracts, regardless of the amount, except that use of the clause in Bureau of Indian Affairs construction contracts is mandatory.

PREFERENCE TO LOCAL RESIDENTS

Preference in employment for all work to be performed under this contract including subcontracts thereunder, shall be given to local residents subject to the provisions of Clause 21, Equal Opportunity, SF 23-A.

PART 14-8—TERMINATION OF CONTRACTS

Subpart 14-8.6—Termination for Default

Sec.

- | | |
|------------|--|
| 14-8.601 | General. |
| 14-8.602 | Default termination of fixed-price supply contracts. |
| 14-8.602-3 | Procedure in case of default. |
| 14-8.603 | Default termination of fixed-price construction contracts. |
| 14-8.603-3 | Procedure in case of default. |

AUTHORITY: The provisions of this Part 14-8 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 14-8.6—Termination for Default

§ 14-8.601 General.

(a) No contract shall be terminated for failure to comply with the equal opportunity provisions of a contract except as provided in §§ 1-12.805-8 of this title and 14-12.805-8 of this chapter.

(b) The timely procurement of materials required for the performance of a contract is the responsibility of a prime contractor, and he is responsible for obtaining and submitting data to justify delays caused by subcontractors and suppliers.

§ 14-8.602 Default termination of fixed-price supply contracts.

§ 14-8.602-3 Procedure in case of default.

(a) In addition to the requirements of § 1-8.602-3(d) of this title, the notice of termination shall be specific with respect to the following:

(1) Instructions regarding the safeguarding and disposition of any Government property in the possession of the contractor;

(2) Where applicable, a statement that the defaulting contractor and his surety will be liable for liquidated damages at the rate specified until such reasonable time as may be required to complete the work or secure delivery, as the case may be, in addition to any excess costs involved in obtaining performance elsewhere; and

(3) Instructions regarding the acquisition by the Government of any completed supplies or manufacturing materials.

(b) Language suggesting cancellation of the contract shall be avoided in issuing the notice of termination.

(c) The termination notice shall be signed by the contracting officer or other person properly vested with such authority.

(d) In order to assure that the contractor receives the termination notice, the contracting officer shall forward such notice via certified mail, return receipt requested, or other appropriate means which will assure a signed receipt for the notice.

(e) With respect to the distribution of the termination notice see § 1-8.602-3(e) of this title. A copy of the notice shall also be furnished to any assignee of the contractor for the particular contract involved.

§ 14-8.603 Default termination of fixed-price construction contracts.

§ 14-8.603-3 Procedure in case of default.

(a) In addition to the requirements of § 1-8.603-3(c) of this title, the notice of termination shall be specific with respect to the following:

(1) Instructions regarding the safeguarding and disposition of any Government property in the possession of the contractor;

(2) Where applicable, a statement that the defaulting contractor and his surety will be liable for liquidated damages at the rate specified until such reasonable time as may be required to complete the work; and

(3) Instructions regarding the acquisition by the Government of such materials, appliances, and plant as may be on the site of the construction work and necessary therefor.

(b) Language suggesting cancellation of the contract shall be avoided in issuing the notice of termination.

(c) The termination notice shall be signed by the contracting officer or other person properly vested with such authority.

(d) In order to assure that the contractor receives the termination notice, the contracting officer shall forward such notice via certified mail, return receipt requested, or other appropriate means which will assure a signed receipt for the notice.

(e) With respect to the distribution of the termination notice, see § 1-8.602-3(e) of this title. A copy of the notice shall also be furnished to any assignee of the contractor for the particular contract involved.

PART 14-10—BONDS AND INSURANCE

Subpart 14-10.1—Bonds

§ 14-10.109-50 Additional requirements respecting bonds.

The clauses prescribed for use under the conditions provided in § 14-7.602-50

are to be used, as indicated, by the heads of bureaus and offices.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

PART 14-11—FEDERAL, STATE, AND LOCAL TAXES

Subpart 14-11.3—State and Local Taxes

§ 14-11.302 Applicability.

The clauses prescribed for use in fixed price construction contracts in States with sales, excise, and use taxes may be found in § 14-7.602-50(6).

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

[F.R. Doc. 68-5941; Filed, May 17, 1968; 8:46 a.m.]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. MC-37 (Sub-No. 2A)]

PART 1048—COMMERCIAL ZONES

Minneapolis-St. Paul, Minn., Commercial Zone; Correction

On page 6771 of the May 3, 1968, issue of the FEDERAL REGISTER, a Decision and Order was published redescribing the limits of the Minneapolis-St. Paul, Minn., commercial zone as set forth in § 1048.26 of Title 49 of the Code of Federal Regulations. This amendment inadvertently included certain areas recommended to be included in the zone by the examiner in Ex Parte No. MC-37 (Sub-No. 2) served December 13, 1967, which report and recommended order are pending before the Commission on exceptions.

Section 1048.26 of Chapter X of Title 49 of the Code of Federal Regulations describing the limits of the Minneapolis-St. Paul, Minn., commercial zone, is corrected to read as follows:

§ 1048.26 Minneapolis-St. Paul, Minn.

The zone adjacent to and commercially a part of Minneapolis-St. Paul, Minn., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b) (8) of the Interstate Commerce Act (49 U.S.C. 303(b) (8)) includes and it is comprised of all points as follows:

Beginning at the southern boundary of Fort Snelling Reservation and the Minnesota River and extending west and north along the southern and western boundaries of Fort Snelling Reservation to the southeast corner of the village of Richfield, thence west along the southern boundary of the village of Richfield and the southern boundary of the village of Edina to the southwest corner of the village of Edina, thence north along the western boundary of the village of Edina to the southern boundary of the village of Hopkins, thence along the southern, western, and northern boundaries of the village

of Hopkins to the western boundary of the village of St. Louis Park, thence north along the western boundaries of the villages of St. Louis Park, Golden Valley, and New Hope, to the northwestern corner of the village of New Hope, thence east along the northern boundary of the villages of New Hope and Crystal to the western boundary of the village of Brooklyn Center, thence north along the western boundary to the village of Brooklyn Center to its northern boundary, thence east along such northern boundary to the Hennepin County-Anoka County line, thence north along such county line to the northwestern corner of Fridley Township in Anoka County, thence east along the northern boundary of Fridley Township to the northwest corner of Mounds View Township in Ramsey County, thence east and south along the northern and eastern boundaries of Mounds View Township to the northwestern corner of New Canada Township, thence east and south along the northern and eastern boundaries of New Canada Township to the northeastern corner of the village of North St. Paul, thence south along the eastern boundary of the village of North St. Paul to the southeast corner of such village, thence south along the eastern boundary of New Canada Township to the northeastern corner of the village of Newport, thence south and west along the eastern and southern boundaries of the village of Newport to U.S. Highway 61, thence southeasterly along U.S. Highway 61 to the eastern boundary of the village of St. Paul Park, thence along the eastern, southern, and western boundaries of the village of St. Paul Park to a point on the Mississippi River opposite the southeast corner of the village of Inver Grove, thence westerly across the river and along the southern and western boundaries of the village of Inver Grove to the northwest corner of such village, thence due north to the southern boundary of Mendota Township in Dakota County, thence west along the southern boundary of Mendota Township to County Road 31, thence southerly along County Road 31 to junction County Road 28, thence westerly along County Road 28 to junction Minnesota Highway 13, thence northerly along Minnesota Highway 13 to the southern boundary of Mendota Township, thence west along the southern boundary of Mendota Township to the Minnesota River, thence west across the river and southwesterly along the river to point of beginning.

(49 Stat. 543, as amended, 544, as amended, 546, as amended; 49 U.S.C. 302, 303, 304)

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5954; Filed, May 17, 1968;
8:47 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 862.8]

PART 862—WAGE RATES; SUGAR BEETS

Persons Employed in Production, Cultivation, or Harvesting

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"),

after investigation and consideration of the evidence obtained at the public hearings held during November and December 1967, the following determination is hereby issued.

§ 862.8 Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugar beets.

(a) *Requirements.* A producer of sugar beets shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in the production, cultivation, or harvesting of sugar beets, as provided in paragraph (b) of this section, shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates required by existing legal obligations, regardless of whether those obligations resulted from an agreement (such as a labor union agreement) or were created by State or Federal legislative action, or at rates as agreed upon between the producer and the worker, but not less than the following, which shall become effective on May 20, 1968, and shall remain in effect until amended, superseded, or terminated.

(i) *When employed on a time basis.* For the hand labor operations of Trimming, Hoeing, Hoe-Trimming, Blocking and Thinning, Weeding, Pulling, Topping, Loading, or Gleaning: \$1.50 per hour: *Provided,* That for workers 14 or 15 years of age the hourly rate specified herein may be reduced by not more than 15 percent.

(ii) *When employed on a piecework basis for the hand labor operations in the following table.*

Hand labor operations	Rate per acre
(a) Trimming: Removing either weeds or excess beets with a hoe only	\$12.00
(b) Hoeing: Removing weeds and excess beets with a hoe only	14.50
(c) Hoe-Trimming: Removing weeds with a hoe and by hand and removing excess beets with a hoe only	17.50
(d) Weeding: Removing weeds with a hoe and by hand following either (a), (b), or (c) above, or (e) below	9.00

and in the State of California only:

(e) Blocking and Thinning: Removing weeds and excess beets with a hoe and by hand

Wide row planting. The above rates may be reduced by not more than the indicated percentages for the following row spacing: 28 inches or more but less than 31 inches, 20 percent; 31 inches or more but less than 34 inches, 25 percent; 34 inches or more, 30 percent.

(iii) *When employed on a piecework basis for hand labor operations not specified or defined, or for harvesting.* The piecework rate for blocking and thinning in States other than California, weeding not preceded by (a), (b), (c),

or (e) of subdivision (ii) of this subparagraph, and any other hand labor operation involving the removal of beets or weeds which is not defined above, and for the operations of pulling, topping, loading, or gleaning, shall be as agreed upon between the producer and the worker: *Provided,* That the average hourly rate of earnings of each worker for each operation shall be not less than \$1.50 per hour computed on the basis of the total time such worker is employed on the farm for such operation.

(iv) *When employed on a time or piecework basis for other operations.* For all other operations in the production, cultivation, or harvesting of sugar beets for which no minimum rate is provided for herein, the rate shall be as agreed upon between the producer and the worker.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work in the field and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, or any other class of worker to report to a place other than the field, such as an assembly point, tractor shed, etc., located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting labor point or labor camp to the farm is not compensable working time.

(b) *Applicability of wage requirements.* The wage requirements of this section apply to all persons who are employed or who work on the farm in operations directly connected with the production, cultivation, or harvesting of sugar beets on any acreage from which sugar beets are marketed or processed for the production of sugar, or any acreage which qualifies as bona fide abandoned. Such persons include field overseers or supervisors while directing other workers, and those workers employed by an independent contractor who performs the above services on the farm. The wage requirements are not applicable to persons who voluntarily perform work without pay on the farm for a religious or charitable institution or organization; inmates of a prison who work on a farm operated by the prison; truck drivers employed by a contractor engaged by the producer only in hauling sugar beets; members of a cooperative arrangement among producers for the exchange of labor to be performed by themselves or members of their families; persons who have an agreement with the producer to perform all work on a specified acreage in return for a share of the

crop or crop proceeds if such share, including the share of any Sugar Act payments, results in earnings at least as much as would otherwise be received in accordance with the requirements of this section of the work performed; independent contractors and members of their immediate families; or workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugar beets, including but not limited to, mechanics, welders, and other maintenance workers and repairmen.

(c) *Payment of wages.* Workers shall be paid in cash for all work performed. Deductions from cash payments are permitted and may be made for cash advances to workers and, in the amounts agreed upon, for items furnished such as meals and transportation and for mandatory deductions or withholdings required by law. Deductions may not be made for payments to a labor contractor or supervisor for their services, or for any items which the producer agreed to furnish the worker free of charge.

(d) *Evidence of compliance.* Each producer subject to the provisions of this section shall keep and preserve, for a period of 3 years following the date on which his application for a Sugar Act payment is filed, such wage records as will demonstrate that each worker has been paid in full in accordance with the requirements of this section. Wage records should set forth dates work was performed, the class of work performed, units of work (piecework or hours), agreed upon rates per unit of work, total earnings, and any permissible deductions, and the amount paid each worker. The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee such records or other evidence as may satisfy such committee that the requirements of this section have been met.

(e) *Employment of workers through a labor contractor or crew leader.* If a producer employs workers through a labor contractor or crew leader and makes payment of workers' wages to him, the producer shall obtain from such contractor or crew leader (1) a copy of his authorization signed by each worker to collect wages due each such worker; (2) a wage record sheet showing the amounts earned and due each worker; and (3) a written representation that he will pay to each worker the wage rates agreed upon by the contractor and the producer but in no event less than those provided by this section. Where State or Federal law requires the labor contractor to furnish the worker with a statement of earnings, the producer shall obtain a written agreement from the contractor to furnish the producer with a copy of such statements.

(f) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined herein, through any subterfuge or device whatsoever.

(g) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a

wage claim with the Agricultural Stabilization and Conservation Service County Office against the producer on whose farm the work was performed. Detailed instructions and wage claim forms are available at the county ASCS office. Such claim must be filed within 2 years from the date the work with respect to which the claim is made was performed. Upon receipt of a wage claim the county ASCS office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The county ASC committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendations for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Agricultural Stabilization and Conservation Service Office. The address of the State ASCS Office will be furnished by the local county ASCS office. Upon receipt of the appeal the State ASC committee shall likewise consider the facts and notify the producer and worker in writing of its recommendations for settlement of the claim. If the recommendation of the State ASC committee is not acceptable, either party may file an appeal with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All such appeals shall be filed within 15 days after receipt of the recommended settlement of the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, State and County Operations, his decision shall be binding on all parties insofar as payments under the act are concerned. Appeals procedures are set forth and explained fully in Part 780 of this title.

(h) *Failure to pay all wages in full.*

(1) Notwithstanding the provisions of this section requiring that all persons employed on the farm in the production, cultivation, or harvesting of sugar beets be paid in full for all such work as one of the conditions to be met by a producer for payment under the act, if the producer has failed to meet this condition but has met all other conditions, a portion of such payment representing the remainder after deducting from the payment the amount of accrued unpaid wages, may be disbursed to producer(s) upon a determination by the county committee (i) that the producer has made a full disclosure to the county committee or its representatives of any known failure to pay all workers on the farm wages in full as a condition for payment under the Sugar Act; and (ii) that either (a) the failure to pay all workers their wages in full was caused by the financial inability of the producer, or (b) the failure to pay all workers in full was caused by an inadvertent error or was not the fault of the producer or his agent, and the producer has used reasonable diligence to locate and to pay in full the wages due all such workers. If the county

committee makes the determination as heretofore provided in this paragraph, such committee shall cause to be deducted from the payment for the farm the full amount of the unpaid wages which shall be paid promptly to each worker involved if he can be located, otherwise the amount due shall be held for his account, and the remainder of the payment for the farm, if any, shall be made to the producer. If the county committee determines that the producer did not pay all workers in full because of an inadvertent error that was not discovered until after he received his Sugar Act payment, the producer shall be placed on the claims control record for the total amount of the unpaid wages.

(2) Except as provided in subparagraph (1) of this paragraph, if upon investigation the county committee determines that the producer failed to pay all workers on the farm the required wages, the entire Sugar Act payment with respect to such farm shall be withheld from the producer until such time as evidence is presented to the county committee which will satisfy the county committee that all workers have been paid in full the wages earned by them, or if unpaid workers cannot be located and the county committee determines that the producer used reasonable diligence to locate such workers, the amounts of unpaid wages shall be deducted from the Sugar Act payment computed for the farm and the balance released to the producer after the expiration of 1 year from the date payment would otherwise be made. If payment has been made to the producer prior to the county committee's determination that all workers on the farm have not been paid in full, the producer shall be placed on the claims control record for the total payment until the county committee determines that all workers on the farm have been paid in full, the producer refunds the entire amount of the debt, or a setoff in the amount of the debt is made from a program payment otherwise due the producer, or the county committee after determining that the producer used reasonable diligence to locate such workers has recovered from such producer the amount of unpaid wages computed for the farm.

(i) *Child labor.* Notwithstanding any of the foregoing provisions of this section, the act provides that the employment of workers under 14 years of age, or the employment of workers 14 and 15 years of age for more than 8 hours per day (except a member of the immediate family of a person who was the legal owner of not less than 40 percent of the crop at the time work was performed), will result in a deduction from Sugar Act payments to the producer.

(j) *Checking compliance.* The procedures to be followed by ASCS county offices in checking compliance with the wage requirements of this section are set forth under the applicable sections of Handbook 1-SU issued by the Deputy Administrator, State and County Operations, ASCS. Copies of Handbook 1-SU may be inspected at local county

ASCS offices and copies may be obtained from State Agricultural Stabilization and Conservation Service offices. The address of the State ASCS office will be furnished by the local county ASCS office.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination provides fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugar beets as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugar beets with respect to which an application for payment is made, shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determination the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugar beets and cost of production), and the differences in conditions among the various sugar producing areas.

(c) *Wage determination.* This determination differs from the prior determination in the following respects: (1) The minimum hourly wage rate for specified hand labor operations is increased 10 cents per hour—from \$1.40 to \$1.50; (2) minimum piecework rates are increased in amounts ranging from 50 cents per acre to \$1.50 per acre, i.e., Trimming—\$12; Hoeing—\$14.50; Hoe-Trimming—\$17.50; Weeding—\$9; and in the State of California only, Blocking and Thinning—\$24.50; (3) the minimum hourly rate for workers 14 and 15 years of age may be reduced by not more than 15 percent instead of 25 percent; (4) if a producer employs workers through a labor contractor and the worker's wages are collected by such contractor the producer shall obtain from the contractor a copy of his authorization signed by each worker to collect wages due each worker, a wage record sheet showing the amounts earned and due each worker, a written representation by the contractor that he will pay each worker the wage rates agreed upon by the contractor and the producer, but not less than the minimum rates, and where State or Federal law requires the labor contractor to furnish the worker a statement of workers' earnings the producer shall obtain a written agreement from the contractor to furnish the producer a copy of such statements; and (5) several provisions are included concerning previously issued interpretations and explanations of the wage requirements.

Public hearings were held in Detroit, Mich.; Fargo, N. Dak.; San Francisco,

Calif.; Lubbock, Tex.; San Antonio, Tex.; Cheyenne, Wyo.; and Presque Isle, Maine, during the period November 27 through December 12, 1967. These hearings afforded interested persons the opportunity to present testimony and make recommendations relating to fair and reasonable wage rates for sugar beet workers.

Producer representatives generally recommended that there be no increase in minimum hourly or piecework wage rates. Producers in some regions stated that the wage schedule of the prior determination provided producers and workers adequate flexibility, while in other regions producers recommended changes in language and terminology and in one instance proposed a new schedule of rates which would have the effect of reducing rates of the prior determination. A producer in one region recommended agreement between producers and workers on piecework rates with an hourly guarantee as well as specified piecework rates with no hourly guarantee. A number of producers recommended a scale of wage payments based upon the average number of beets and weeds per 100 feet of row as agreed upon between the producer and the worker prior to the hand labor operation. One producer recommended a similar method, but based upon the number of beets and weeds left in the field after the work is finished. Producer representatives from Texas and New Mexico recommended a reduction in wage rates for beet workers, while a producer in northern Minnesota recommended separate regional piecework rates. Producers from various regions recommended that the operation of Weeding be designated as a primary hand labor operation rather than an operation following prior hand labor work.

Representatives of workers recommended that the minimum hourly wage be increased to amounts ranging from \$1.50 to \$2 per hour and that piecework rates be set in proportion. A number of worker representatives recommended that workers employed on a piecework basis be guaranteed earnings not less than the minimum hourly rate. Several worker representatives recommended that producers be required to furnish housing which met minimum standards, while others recommended compulsory workmen's compensation insurance, unemployment insurance, no reduction in the hourly rate for workers 14 and 15 years of age, and other miscellaneous fringe benefits. One representative of workers recommended that where labor contractors were employed the producer be required to pay all workers directly rather than through the contractor.

Consideration has been given to the recommendations made at the public hearings, to returns, costs, and profits of producing sugar beets in recent years, and under conditions likely to prevail for the 1968 crop, and to other pertinent factors. These data indicate that the increases in the minimum rates established in this determination, which average approximately 7 percent, are fair

and reasonable and are within the producers ability to pay.

The basic hand labor operation and related work tasks continue unchanged. It is believed that a uniform piecework rate structure for the sugar-beet area is consistent with the objectives of the wage provisions of the Sugar Act and provides stability in labor recruitment and supply. There is still insufficient broad based information which warrants the designation of Weeding as a primary hand labor operation. Where ideal field conditions exist and the weeding of beets is all that is required, producers may employ workers on an hourly basis or may agree upon a piecework basis with a minimum hourly guarantee of earnings if the work task performed is different than any of those specified in the piecework rate scale. Quality of work continues to be a function of the producer-worker relationship. More intensive supervision of the worker or the payment of a wage bonus conditioned upon good quality work are effective devices for obtaining labor efficiency.

Under present variable field conditions it is considered inequitable to permit the producer the choice of the specific piecework rate or agreed upon rates with a minimum guarantee for a given field as recommended by some producers. Such an alternative could have the effect of restricting the earnings of workers through a reduction in basic rates.

A recommendation by labor representatives that an hourly earnings guarantee be applied to all workers employed on piecework basis has not been adopted. Sugar beet producers grow a number of crops, typically on family-sized farms, and employ worker crews of diverse composition. The recordkeeping requirements which would be necessary to correctly report the hours worked daily by a group of individuals, such as the family-type worker crew, would increase producers costs. On the other hand the average competent worker would not benefit by the minimum hourly guarantee since the minimum piecework rates of the determination are structured to yield earnings about 15 percent above the hourly rate under average conditions.

The type and sources of the labor supply in the sugar beet area are variable. Under these circumstances the labor contractor system assists both the worker and producer in many regions by bringing them together when the operations should be performed. Congress enacted the Farm Labor Contract Registration Act of 1963 which became effective January 1, 1965. That act requires registration of labor contractors in interstate commerce and imposes obligations on them such as keeping detailed payroll records for each worker, and meeting interstate commerce regulations concerning conveyances, insurance, etc. The Federal law specifically provides that the contractor may pay workers on behalf of another person. In addition to Federal law, a number of States have laws or regulations which impose strict controls on the activities of labor contractors. This determination requires that where a producer employs workers through a

labor contractor and pays the workers' wages to the contractor, the producer must obtain from the contractor a written authorization signed by each worker to collect his wages; records showing amounts earned and due workers; a representation by the contractor that he will pay each worker the wage rate agreed upon between the contractor and the producer which cannot be less than the minimum rates in this determination; and, where required by Federal or State law, the producer shall obtain from the contractor a record showing the wages paid each worker. Appropriate administrative instructions will be issued to State and County ASCS offices to implement this provision, with the view to eliminating any abuses which may have occurred under the labor contractor system.

The Sugar Act does not contain statutory authority for the establishment of housing standards. However, where producers have made an agreement with the worker to provide housing as a part of his remuneration for work performed, the producer is required to furnish such housing in order to comply with current wage requirements under the Sugar Act, or is required to pay the worker any out-of-pocket costs for housing. A number of States have mandatory laws or regulations that apply to labor camps or housing for migratory agricultural workers. Regulations issued by the U.S. Employment Service of the Department of Labor also require minimum housing standards for interstate workers recruited through the several State Employment Services.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interpretations or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. 1132)

NOTE: The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1943.

Effective date: May 20, 1968.

Signed at Washington, D.C., on May 14, 1968.

JOHN A. SCHNITTKER,
Acting Secretary.

[F.R. Doc. 68-5951; Filed, May 17, 1968; 8:47 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 321]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.621 Lemon Regulation 321.

(a) Findings. (1) Pursuant to the marketing agreement, as amended, and

Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on May 14, 1968.

(b) Order. (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period May 19, 1968, through May 25, 1968, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 255,750 cartons;
- (iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: May 16, 1968.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-5997; Filed, May 17, 1968; 8:50 a.m.]

[Nectarine Reg. 1]

PART 916—NECTARINES GROWN IN CALIFORNIA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Nectarine Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of nectarines, as hereinafter set forth, and in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that, as hereinafter set forth, the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than the date hereinafter specified. A reasonable determination as to the supply of, and the demand for, such nectarines must await the development of the crop thereof; adequate information thereon was not available to the Nectarine Administrative Committee until the date hereinafter set forth on which an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such nectarines; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; shipments of the current crop of such nectarines are expected to begin on or about the effective date hereof; this regulation should be applicable to all such shipments in order to

effectuate the declared policy of the act; the provisions of this regulation are identical with the aforesaid recommendation of the committee; information concerning such provisions and effective time has been disseminated among handlers of such nectarines; and compliance with the provisions of this regulation will not require of handlers any preparation therefor which cannot be completed by the effective time hereof. Such committee meeting was held on May 14, 1968.

§ 916.334 Nectarine Regulation 1.

(a) *Order.* (1) During the period May 19, 1968, through May 31, 1969, no handler shall handle any package or container of any variety of nectarines unless such nectarines grade at least U.S. No. 1: *Provided*, That nectarines 2 inches in diameter or smaller, or 4 x 4 size or smaller, shall not have fairly light colored, fairly smooth scars which exceed the aggregate area of a circle $\frac{3}{8}$ inch in diameter, and nectarines larger than 2 inches in diameter, or larger than 4 x 4 size, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle $\frac{1}{2}$ inch in diameter.

(2) When used herein, "U.S. No. 1" shall have the same meaning as set forth in the U.S. Standards for Grades of Nectarines (§§ 51.3145-51.3160 of this title); and all other terms shall have the same meaning as when used in the marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: May 17, 1968.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-6069; Filed, May 17, 1968; 11:21 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Plum Reg. 2]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Regulation by Grades

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Plum Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of plums, in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that, as hereinafter set forth, the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than May 19, 1968. A reasonable determination as to the supply of, and the demand for, such plums must await the development of the crop thereof, and adequate information thereon was not available to the Plum Commodity Committee until May 13, 1968, on which date an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such plums. Interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held. Shipments of the current crop of such plums are expected to begin on or about the effective date hereof; this regulation should be applicable, insofar as practicable, to all such shipments in order to effectuate the declared policy of the act; the provisions of this regulation are identical with the aforesaid recommendation of the committee; information concerning such provisions and effective time has been disseminated among handlers of such plums; and compliance with the provisions of this regulation will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

§ 917.405 Plum Regulation 2.

(a) *Order.* (1) During the period May 19, 1968, through May 31, 1969, no handler shall ship any lot of packages or containers of any variety of plums unless such plums grade at least U.S. No. 1.

(2) When used herein, "U.S. No. 1" shall have the same meaning as set forth in the U.S. Standards for Grades of Fresh Plums and Prunes (§§ 51.1520-51.1538 of this title) and all other terms shall have the same meaning as when used in the amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: May 14, 1968.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-5949; Filed, May 17, 1968; 8:47 a.m.]

[Plum Reg. 3]

PART 917—FRESH PEARS, PLUMS, AND PEACHES

Regulation by Sizes

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Plum Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of plums of the variety hereinafter set forth, and in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that, as hereinafter set forth, the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than May 19, 1968. A reasonable determination as to the supply of, and the demand for, such plums must await the development of the crop thereof, and adequate information thereon was not available to the Plum Commodity Committee until May 13, 1968, on which date an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such plums. Interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; shipments of the current crop of such plums are expected to begin on or about May 21, 1968; this regulation should be applicable to all such shipments in order to effectuate the declared policy of the act; the provisions of this regulation are identical with the aforesaid recommendation of the committee; information concerning such provisions and effective time has been disseminated among handlers of such plums; and compliance with the provisions of this regulation will not require of handlers and preparation therefor which cannot be completed by the effective time hereof.

§ 917.406 Plum Regulation 3.

(a) *Order.* (1) During the period May 19, 1968, through October 31, 1968, no

handler shall ship any package or other container of Beauty plums unless such plums are of a size that an 8-pound sample, representative of the sizes of the plums in the package or container, contains not more than 91 plums.

(2) Terms used herein shall have the same meaning as when used in the amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674)

Dated: May 16, 1968.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-6070; Filed, May 17, 1968; 11:21 a.m.]

[Amdt. 1]

PART 967—CELERY GROWN IN FLORIDA

Base Quantities and Reports

Notice of rule making regarding a proposal to amend Subpart—Rules and Regulations, to be effective under Marketing Agreement No. 149 and Order No. 967 (7 CFR Part 967), regulating the handling of celery grown in Florida was published in the FEDERAL REGISTER April 3, 1968 (33 F.R. 5303). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The notice afforded interested persons an opportunity to file written data, views, or arguments pertaining thereto not later than the seventh day following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matter presented, including that contained in the proposal set forth in the aforesaid notice which was recommended by the Florida Celery Committee, established pursuant to said marketing agreement and order, it is hereby found that the amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act.

The amendment of § 967.151 indicates the manner of calculation and application of the Uniform Percentage pursuant to § 967.38. Further, it indicates the continued applicability of the Uniform Percentage even though a portion (not exceeding 37,500 crates) of a Base Quantity is transferred from the holder of the Base Quantity to another producer.

Therefore, Subpart—Rules and Regulations (7 CFR 967.100-967.166, inclusive) is amended in the following respects:

A. Section 967.151 is amended by adding thereto the following new subparagraph (4) to paragraph (e):

§ 967.151 Base quantities.

(e)

(4) No transfer of all or a portion of a Base Quantity that was originally

issued by the committee to a producer in an amount greater than 37,500 crates shall (i) cause the elimination of such Base Quantity from the Marketable Quantity or from the total Base Quantities when the Uniform Percentage is calculated pursuant to § 967.38(a), nor (ii) change the applicability of such Uniform Percentage in establishing the Marketable Allotment with respect to the portion of his Base Quantity that was not transferred, regardless of whether or not such remainder exceeds 37,500 crates. The same Uniform Percentage shall also be applicable to the transferee-producer with respect to all or the portion of the transferred Base Quantity, regardless of whether or not the transferred Base Quantity or portion thereof is 37,500 crates or less or, when added to the Base Quantity originally issued to such transferee-producer, does not aggregate more than 37,500 crates.

B. Section 967.165 of the Subpart—Rules and Regulations is amended by adding thereto a new subparagraph (5) to paragraph (b) reading as follows:

§ 967.165 Reports.

(b) * * *

(5) Pursuant to § 967.37, the committee shall be notified within a reasonable length of time by the executor, attorney, or receiver as applicable, following the death of a producer, or upon dissolution of any partnership, corporation or company which is a producer, who or which is a holder of a Base Quantity, of (i) the current status of the Base Quantity, and (ii) the final status or disposition of the Base Quantity.

It is hereby found that good cause exists for not postponing the effective date of this amendment beyond the date of publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the Florida Celery Committee has already announced to the celery industry that it will convene May 21, 1968, for the purpose of considering and adopting a marketing policy for the ensuing marketing season pursuant to § 967.35; (2) it is necessary to place this amendment in effect as soon as possible so as to afford producers and other interested persons maximum time for arranging and conducting their operations accordingly under the marketing agreement and order; (3) the amendment should be effective, and available for consideration by the committee not later than the time of the committee deliberations concerning, among other things, the total quantity of celery that may be available to meet market requirements and establish orderly marketing conditions, and its recommendation of a Marketable Quantity for the ensuing season; (4) the provisions hereof do not require any special preparation on the part of handlers which cannot be completed by the effective date hereinafter set forth; (5) notice of proposed rule making was given on April 3, 1968, by publication in the FEDERAL REGISTER (33 F.R. 5303); and (6) no useful purpose would be served by postponing such effective date

beyond the date of publication in the FEDERAL REGISTER.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated May 14, 1968, to become effective upon publication in the FEDERAL REGISTER.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-5950; Filed, May 17, 1968; 8:47 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[Amdt. 18]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—Provisions for Participation of Commercial Banks in Pools of CCC Price Support Loans on Certain Commodities

INCREASE IN INTEREST RATE

The regulations issued by the Commodity Credit Corporation published in 29 F.R. 3614, as amended by 29 F.R. 4991, 8396, 15281, and 18212, 30 F.R. 14310 and 15582, 31 F.R. 474, 10179 and 13641, 32 F.R. 122, 3339, 5462, 6342, 10431, 13713, and 16528, 33 F.R. 5746, containing the terms and conditions for participation of commercial banks in pools of CCC price support loans on certain commodities, are hereby further amended to change from 5.625 to 5.875 percent per annum, effective May 20, 1968, the rate of interest on certificates evidencing participation in financing price support loans.

Section 1421.3825(a) is amended to read as follows:

§ 1421.3825 Rate of interest and basis of computation of interest earned.

(a) *Rate of interest.* Certificates shall earn interest at the rate of 4.375 percent per annum through and including July 14, 1967, 4.875 percent per annum from July 15, 1967, through and including September 30, 1967, 5.125 percent per annum from October 1, 1967, through and including November 30, 1967, 5.375 percent per annum from December 1, 1967, through and including April 14, 1968, 5.625 percent per annum from April 15, 1968, through and including May 19, 1968, and 5.875 percent per annum thereafter.

(Secs. 4 and 5, 62 Stat. 1070, 1072, as amended; 15 U.S.C. 714 b and c)

Signed at Washington, D.C., on May 16, 1968.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 68-5999; Filed, May 17, 1968; 8:50 a.m.]

[Amdt. 14]

PART 1427—COTTON

Subpart—Participation of Financial Institutions in Cotton Loan Pools

INCREASE IN INTEREST RATE

The regulation issued by the Commodity Credit Corporation published in 30 F.R. 7814, as amended by 30 F.R. 14310 and 15582, 31 F.R. 474, 10179 and 13641, 32 F.R. 122, 3340, 5462, 6342, 10431, 13714, and 16528, 33 F.R. 5747, containing the terms and conditions for participation of financial institutions in pools of CCC price support loans on cotton are hereby further amended to change from 5.625

to 5.875 percent per annum, effective May 20, 1968, the rate of interest on certificates evidencing participation in financing price support loans. Section 1427.2239(a) is amended to read as follows:

§ 1427.2239 Rate of interest and basis of computation of interest earned.

(a) *Rate of interest.* Certificates shall earn interest at the rate of 4.375 percent per annum through and including July 14, 1967, 4.875 percent per annum from July 15, 1967, through and including September 30, 1967, 5.125 percent per annum from October 1, 1967, through and including November 30, 1967, 5.375

percent per annum from December 1, 1967, through and including April 14, 1968, 5.625 percent per annum from April 15, 1968, through and including May 19, 1968, and 5.875 percent per annum thereafter.

(Secs. 4 and 5, 62 Stat. 1070, 1072, as amended; 15 U.S.C. 714 b and c)

Signed at Washington, D.C., on May 16, 1968.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 68-6000; Filed, May 17, 1968; 8:50 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

GRAND TETON NATIONAL PARK, WYO.

Boating and Fishing

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), 245 DM-1 (27 F.R. 6395), National Park Service Order No. 34 (31 F.R. 4255), Regional Director, Midwest Region Order No. 4 (31 F.R. 5769), as amended, it is proposed to amend § 7.22 of Title 36 of the Code of Federal Regulations.

The purpose of these amendments is to (1) reorganize the regulations concerning boating and fishing use; (2) to make certain editorial and technical changes for the purpose of clarifying sections of the existing regulations; (3) to eliminate regulatory material on camping, house trailer use, applicability of State fishing laws and regulations, and certain boating safety requirements, all of which are provided for under regulations contained in Parts 2 and 3 of this chapter; (4) to restrict boating on the Snake River to hand propelled rubber rafts, canoes or kayaks, and require all boat operators to register with the Superintendent prior to and at the conclusion of each trip on the river; (5) to permit the use or possession of dead, nongame fish in Leigh and Jenny Lakes during the winter season; and (6) to close Sawmill Pond to fishing.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections to the Superintendent, Grand Teton National Park, Moose, Wyo. 83012, within 30 days of the publication of this notice in the FEDERAL REGISTER.

(5 U.S.C. 553; 39 Stat. 535; 16 U.S.C. 3)

HOWARD H. CHAPMAN,
Superintendent,
Grand Teton National Park.

Paragraphs (b) and (d) of § 7.22 of Title 36 of the Code of Federal Regulations are revised and paragraphs (e) and (g) are revoked to read as follows:

§ 7.22 Grant Teton National Park.

(b) *Boating*—(1) *Permit required*. No privately owned vessel shall be placed or operated upon park waters without a permit from the Superintendent. Such permit shall be granted except for failure of the vessel or its operator to comply

with the regulations contained in this paragraph and in Part 3 of this chapter. The Superintendent shall have authority to revoke the permit and require the immediate removal of such vessel from park waters upon failure of the vessel or its operator to comply with the regulations contained in this paragraph or in Part 3 of this chapter.

(2) *Motorboats*. Motorboats are prohibited on all park waters except Jackson, Jenny, and Phelps Lakes. On Jenny Lake, the use of motors in excess of 7½ horsepower on vessels is prohibited, except for authorized boating concessioners who may operate motors in excess of such limits under conditions specified by the Superintendent.

(3) *Hand propelled vessels*. Hand propelled vessels are permitted on Jackson, Jenny, Phelps, Emma Matilda, Two Ocean, Taggart, Bradley, Bearpaw, Leigh, and String Lakes, and on the Snake River, except within 1,000 feet of the downstream face of Jackson Lake Dam. Hand propelled vessels may also be used on the stream flowing from the outlet of Bearpaw Lake to Jackson Lake. All other waters within the park are closed to boating.

(4) *Sailboats*. Sailboats are prohibited except on Jackson Lake.

(5) *Snake River*. Operators of all vessels placed or operated on the Snake River within the park shall be registered by the operator with the Superintendent at the beginning and conclusion of each trip. Vessels other than hand propelled rubber rafts, canoes, and kayaks, are prohibited from being launched on the Snake River within the park.

(d) *Fishing*—(1) *Closed waters*. The following waters within the park are closed to fishing at all times: The Snake River for a distance of 150 feet below the downstream face of Jackson Lake Dam; Swan Lake; Hedrick's Ponds; Christian Ponds; Sawmill Pond; and Cottonwood Creek from the outlet of Jenny Lake downstream to the Saddle Horse Concession Bridge, as posted.

(2) *Bait*. The use or possession of dead, nongame fish for bait is permitted on or along the shore of Jackson Lake during the open season for fishing and on or along the shores of Leigh and Jenny Lakes from December 1 to April 30. Authorized marina bait dealers at Jackson Lake may retain live nongame fish for bait in containers: *Provided*, That such fish have been taken from Jackson Lake or from waters draining into Jackson Lake: *And provided further*, That such fish are dead when sold.

(e) [Revoked]

(g) [Revoked]

[F.R. Doc. 68-5931; Filed, May 17, 1968; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1007]

[Docket No. AO-366]

MILK IN GEORGIA MARKETING AREA

Notice of Hearing on Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Dinkler Plaza Hotel, 98 Forsyth Street NW., Atlanta, Ga. 30303, beginning at 10 a.m., on June 11, 1968, with respect to a proposed marketing agreement and order, regulating the handling of milk in the Georgia marketing area.

The public hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof; and for the purpose of determining (1) whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce, (2) whether there is need for a marketing agreement or order regulating the handling of milk in the area, and (3) whether provisions specified in the proposals or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the Act.

The proposals, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Georgia Milk Producers, Inc., Georgia Association of Dairy Cooperatives, Inc., and Georgia Milk Producers Cooperative Association, Inc.:

Proposal No. 1.

DEFINITIONS

§ 1007.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1007.2 Secretary.

"Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and perform the duties of the Secretary of Agriculture.

§ 1007.3 Department.

"Department" means the U.S. Department of Agriculture.

§ 1007.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 1007.5 Cooperative Association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing milk or milk products, for its members.

§ 1007.6 Georgia marketing area.

The "Georgia marketing area", hereinafter called the "marketing area", means all the territory within the following designated zones, including territory within such zones occupied by governmental (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

(a) Zone 1 of the marketing area means all the territory within the boundaries of the following counties, all in the State of Georgia:

Baldwin.	Jones.
Banks.	Lamar.
Barrow.	Lincoln.
Bartow.	Lumpkin.
Bibb.	McDuffie.
Burke.	Macon.
Butts.	Madison.
Carroll.	Marion.
Chattahoochee.	Meriwether.
Cherokee.	Monroe.
Clarke.	Morgan.
Clayton.	Muscogee.
Cobb.	Newton.
Columbia.	Oconee.
Coweta.	Oglethorpe.
Crawford.	Paulding.
Dawson.	Peach.
De Kalb.	Pickens.
Douglas.	Pike.
Elbert.	Polk.
Fayette.	Putnam.
Floyd.	Rabun.
Forsyth.	Richmond.
Franklin.	Rockdale.
Fulton.	Schley.
Gilmer.	Spalding.
Glascocock.	Stephens.
Gordon.	Talbot.
Greene.	Tallaferro.
Gwinnett.	Taylor.
Habersham.	Towns.
Hall.	Troup.
Hancock.	Twiggs.
Haralson.	Union.
Harris.	Upson.
Hart.	Walton.
Heard.	Warren.
Henry.	Washington.
Houston.	White.
Jackson.	Wilkes.
Jasper.	Wilkinson.
Jefferson.	

(b) Zone 2 of the marketing area means all the territory within the boundaries of the following counties, all in the State of Georgia:

Appling.	Jenkins.
Atkinson.	Johnson.
Bacon.	Lanier.
Baker.	Laurens.
Ben Hill.	Lee.
Berrien.	Liberty.
Bleckley.	Long.
Brantley.	Lowndes.
Brooks.	McIntosh.
Bryan.	Miller.
Bulloch.	Mitchell.
Calhoun.	Montgomery.
Camden.	Pierce.
Candler.	Pulaski.
Charlton.	Quitman.
Chatham.	Randolph.
Clay.	Screven.
Clinch.	Seminole.
Coffee.	Stewart.
Colquitt.	Sumter.
Cook.	Tattall.
Crisp.	Telfair.
Decatur.	Terrell.
Dodge.	Thomas.
Dooley.	Tift.
Dougherty.	Toombs.
Early.	Treutlen.
Echols.	Turner.
Effingham.	Ware.
Emanuel.	Wayne.
Evans.	Webster.
Glynn.	Wheeler.
Grady.	Wilcox.
Irwin.	Worth.
Jeff Davis.	

§ 1007.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, plain or flavored milk and milk drinks (unmodified or fortified), including "dietary milk products" and reconstituted milk or skim milk (including those used in the production of fluid products in semblance of milk or skim milk), concentrated milk not in hermetically sealed metal containers, cream (sweet) and mixtures of cream and milk or skim milk.

§ 1007.8 Distributing plant.

"Distributing plant" means a plant that is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month in the marketing area on routes.

§ 1007.9 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority is shipped during the month to a pool plant.

§ 1007.10 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is neither an other order plant, a producer-handler plant, nor an exempt distributing plant.

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products received at the plant during the month is disposed of on routes and not less than 10 percent of such receipts is disposed of in the marketing area on routes.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products to pool plants pursuant to paragraph (a) of this section.

§ 1007.11 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1007.10 and a greater volume of fluid milk products is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1007.12 Route.

"Route" means a delivery (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product classified as Class I pursuant to § 107.41(a)(1).

§ 1007.13 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(d) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler, in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was diverted;

(e) Any person in his capacity as the operator of an other order plant that is

either a distributing plant or a supply plant; and

(f) A producer-handler.

§ 1007.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant from which the Class I disposition (except that represented by nonfat solids used in the fortification of fluid milk products) is entirely from his own farm production;

(b) Receives no fluid milk products from sources other than his own farm production; and

(c) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all fluid milk products handled and the operation of the processing and packaging business are his personal enterprise and risk.

§ 1007.15 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant, who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1007.16 from a pool plant to a nonpool plant.

§ 1007.16 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1007.13(d): *Provided*, That if the milk received at a pool plant from a handler pursuant to § 1007.13(d) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1007.13(d) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is neither an other order plant nor a producer-handler plant for the account of the pool plant operator or a cooperative association in any month in which not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant, subject to the following:

(1) Milk so diverted for the account of a handler operating a pool plant shall be deemed to have been received by the handler at the plant to which diverted and if diverted for the account of a cooperative association, shall be deemed to have been received by the cooperative association at the location of the plant to which diverted;

(2) If diverted by a cooperative association for its account as milk of its members to nonpool plants which does not exceed 25 percent of the milk physically received from member producers of such cooperative association at pool plants during the month, except that if

milk of members is diverted by the cooperative association in excess of the specified percentage, no milk diverted by the cooperative association during the month shall be producer milk unless the cooperative association designates the dairy farmers whose milk is not producer milk;

(3) If diverted by a handler in his capacity as the operator of a pool plant, as milk of a producer who is not a member of a cooperative association diverting milk pursuant to subparagraph (2) of this paragraph, which does not exceed 25 percent of the aggregate quantity of milk received at such plant from such nonmember producers during the month except that if milk of nonmember producers is diverted by the handler in excess of the specified percentage, no milk diverted by the handler during the month shall be producer milk unless the handler designates the dairy farmers whose milk is not producer milk.

§ 1007.17 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products from any source except (1) producer milk, (2) fluid milk products from pool plants, and (3) fluid milk products in inventory at the beginning of the month;

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed, converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1007.33.

§ 1007.18 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department.

MARKET ADMINISTRATOR

§ 1007.20 Designation.

The agency for the administration of this order shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1007.21 Powers.

The market administrator shall have the following powers with respect to this order:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 1007.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this order, including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received pursuant to § 1007.77 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 1007.76, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this order, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who, after the date upon which he is required to perform such acts, has not made either reports pursuant to §§ 1007.30 through 1007.32 or payments pursuant to §§ 1007.71, 1007.76, 1007.77, and 1007.78;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends, and by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The fifth day of each month, the Class I price and Class I butterfat differential, both for the current month;

(2) The fifth day of each month, the Class II price and the Class II butterfat differential for the preceding month; and

(3) The 11th day of each month the uniform price and the producer butterfat differential, both for the preceding month;

(k) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, with respect to milk delivered by such association or by its members to each handler during the month: (1) The percentage of such receipts classified in each class; and (2) the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports, the milk received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month.

(l) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1007.45(a)(10) and the corresponding step of § 1007.45(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received skim milk and butterfat in the form of fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1007.45, pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such reports; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS, AND FACILITIES

§ 1007.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler (except a handler pursuant to § 1007.13(d)) shall report to the market administrator for such month with respect to each plant at which milk is received, reporting in detail and on forms prescribed by the market administrator:

- (a) The quantities of skim milk and butterfat contained in or represented by:
 - (1) Producer milk (or, in the case of handlers pursuant to § 1007.13(b), Grade A milk received from dairy farmers);
 - (2) Fluid milk products received from pool plants of other handlers;
 - (3) Other source milk;
 - (4) Milk diverted to nonpool plants pursuant to § 1007.16; and
 - (5) Inventories of fluid milk products at the beginning and end of the month.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 1007.31 Producer payroll reports.

(a) Each handler pursuant to § 1007.13(a), (c), and (d) shall report to the market administrator in detail and on forms prescribed by the market administrator as follows:

(1) On or before the sixth day after the end of each month for each producer from whom milk was received:

- (i) His name and address;
- (ii) The total pounds and butterfat content of milk received during the month and the number of days if less than the entire month on which milk was received from such producer;
- (iii) The total pounds of base milk and excess milk for the month, if applicable;
- (iv) The amount of any deductions authorized in writing by such producer to be made from payments due for milk;

(2) On or before the 21st day of each month the name and address of each producer from whom milk was received during the first 15 days of such month and the pounds of milk so received during said period from such producer; and

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1007.62(b) shall report to the market administrator on or before the 20th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering Grade A milk shall be reported.

§ 1007.32 Other reports.

(a) On or before the sixth day after the end of each month, each handler pursuant to § 107.13(a) shall report to the market administrator, in detail and on forms prescribed by him, the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

(b) On or before the 21st day of each month, each handler pursuant to § 1007.13(d) shall report to the market administrator in detail and on forms prescribed by him, the quantities of producer milk delivered to each pool plant for the first 15 days of such month.

(c) Each producer-handler and each handler exempt pursuant to § 1007.13(e) shall make reports to the market administrator at such time and in such manner as the market administrator may request.

(d) On or before the third day after the end of each month, each cooperative in its capacity as a handler pursuant to § 1007.13(d) shall report to each pool plant operator purchasing producer milk from such cooperative the total pounds and butterfat content of such milk received during the month as ascertained

by the cooperative at the farm of each producer supplying the pool plant.

(e) On or before the third day after the end of each month, the operator of each pool plant purchasing producer milk from a cooperative in its capacity as a handler pursuant to § 1007.13(d) shall report to such cooperative the total pounds and butterfat content of such milk received by the pool plant from the cooperative during the month.

§ 1007.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products in inventory at the beginning and end of the month; and

(d) Verify deductions authorized by producers and the disbursement of moneys so deducted.

§ 1007.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records or specified books and records until further notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK

§ 1007.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1007.30 shall be classified each month pursuant to the provisions of §§ 1007.41 through 1007.45: *Provided*, That such skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 107.41 Classes of utilization.

Subject to the conditions set forth in § 1007.43, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product or in inventory of packaged fluid milk products at the end of the month, except as provided in paragraph (b) (2), (3), (4), and (5) of this section; and

(2) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce aerated cream products, frozen storage cream, sour cream, and sour cream mixtures of milk and skim milk, eggnog, yogurt, frozen dessert mixes, evaporated and condensed milk (plain or sweetened), sterilized fluid products in hermetically sealed metal containers, butter, cheese (including cottage cheese), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, bakery products, meat products, candy, dry or frozen food products, food products in hermetically sealed metal containers, and animal feed;

(2) Skim milk and butterfat in fluid milk products disposed of by a handler for livestock feed;

(3) Skim milk and butterfat in fluid milk products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(5) Contained in inventory of bulk fluid milk products on hand at the end of the month;

(6) Skim milk and butterfat, respectively, in shrinkage assigned pursuant to § 1007.42(c); and

(7) Skim milk and butterfat in shrinkage assigned pursuant to § 1007.42(b) (2).

§ 1007.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat in the pool plants of the handler;

(b) Prorate the resulting amounts between:

(1) Receipts of skim milk and butterfat in:

(i) Producer milk (except that diverted pursuant to § 1007.16(b));

(ii) Receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler; and

(iii) Receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; and

(2) Receipts of skim milk and butterfat in other source milk, exclusive of that specified in subparagraph (1) of this paragraph; and

(c) Multiply the pounds of shrinkage in skim milk and butterfat, respectively, prorated pursuant to paragraph (b) (1) of this section not to exceed 2 percent of

the pounds of skim milk and butterfat, respectively, in receipts described therein, by the percentage of skim milk and butterfat, respectively, classified pursuant to § 1007.41 (a) and (b) (1) through (5) (excluding that in milk diverted pursuant to § 1007.16(b) and shrinkage determined pursuant to paragraph (a) of this section) which is in Class II milk. The resulting amount shall be assigned to the Class II pursuant to § 1007.41(b) (6).

§ 1007.43 Transfers.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of a fluid milk product from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1007.45(a) (10) and the corresponding step of § 1007.45 (b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1007.45(a) (4), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1007.45(a) (9) or (10) and the corresponding steps of § 1007.45(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant that is not an other order plant, a producer-handler, plant, or an exempt distributing plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification in Class II in his report submitted pursuant to § 1007.30.

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be

first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to the skim milk and butterfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants;

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat in fluid milk products so transferred shall be classified as Class II milk.

(c) As follows, if transferred in the form of a fluid milk product to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II milk to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and allocations to

other classes shall be classified as Class II milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1007.41.

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product, from a pool plant to an exempt distributing plant.

§ 1007.44 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1007.30 and from such reports, shall compute for each handler the total pounds of skim milk and butterfat in each class: *Provided*, That if any of the water contained in the milk, from which a product is made, is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1007.45 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1007.44, the market administrator shall determine the classification of producer milk for each handler for each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1007.41(b) (6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1007.41(b) (4) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Except for the first month this order is effective with respect to each handler, subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined

under this or any other Federal order; and

(iv) Receipts of fluid milk products from an exempt distributing plant;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II, the pounds of skim milk received from nonpool plants for which the handler requests a Class II utilization;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from unregulated supply plants;

(a) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of bulk fluid milk products (and for the first month the order is effective with respect to each handler, the pounds of fluid milk products in packaged form) on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (6) (i) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (6) (ii) of this paragraph:

(i) In series beginning with Class II milk the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1007.22(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(11) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received from pool plants of other handlers according to the classification

of such products pursuant to § 1007.43 (a); and

(12) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage".

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk in each class as computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 1007.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential (rounded to the nearest one-tenth cent) at the rate of the Chicago butter price times 0.12 and rounded to the nearest cent.

§ 1007.51 Class prices.

Subject to the provisions of §§ 1007.52 and 1007.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price at plants located in Zone 1 of the marketing area, and in Alabama, North Carolina, or South Carolina shall be the basic formula price for the month plus \$2.40.

(b) *Class II price.* The Class II price shall be the basic formula price.

§ 1007.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 1007.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the following rates:

(a) Class I price, 0.120 times the Chicago butter price for the preceding month.

(b) Class II price, 0.115 times the Chicago butter price for the month.

§ 1007.53 Location differentials to handlers.

(a) For milk received from producers at a pool plant located in Zone 2 of the marketing area or in the State of Florida, which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (c) of this section, and for other source milk to which a location adjustment is applicable, the price computed pursuant to § 1007.51(a) shall be increased 1.5 cents per hundredweight for each ten miles or fraction thereof, that such plant is located from the nearer of the city halls of Augusta, Ga., Macon, Ga., and Columbus, Ga.

(b) For milk received from producers at a pool plant outside the States of Georgia, Florida, Alabama, North Carolina, and South Carolina, and more than

115 miles by shortest highway distance as determined by the market administrator from the State Capitol, Atlanta, Ga., and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (c) of this section and for other source milk to which a location adjustment is applicable, the price computed pursuant to § 1007.51 (a) shall be reduced by 1.5 cents per hundredweight and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance from the State Capitol, Atlanta, Ga., exceeds 125 miles.

(c) For purposes of calculating such adjustment, bulk transfers of fluid milk products between pool plants shall be assigned Class I utilization at the transferee plant, in excess of the sum of receipts at such plant from producers and the pounds assigned Class I utilization to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to the transferor plants at which a plus location adjustment credit is applicable, next to plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would be applicable.

§ 1007.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

APPLICATION OF PRICES

§ 1007.60 Computation of the net pool obligation of each handler.

The net pool obligation of each handler pursuant to § 1007.13 (a), (c), and (d) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1007.45(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1007.45(a)(12) and the corresponding step of § 1007.45 (b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.45(a)(7) and the corresponding step of § 1007.45(b);

(d) Add an amount determined by multiplying the difference between the Class I price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.45(a)(3) and the corresponding step of § 1007.45(b). If the Class I price for the current month is less than the Class I price for the

preceding month the result would be a minus amount;

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1007.45(a)(4) and the corresponding step of § 1007.45(b);

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s), from which an equivalent volume was received, of the skim milk and butterfat subtracted from Class I pursuant to § 1007.45(a)(9) and the corresponding step of § 1007.45(b).

§ 1007.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price as follows:

(a) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports pursuant to § 1007.30 for the month, except those in default of payments required pursuant to § 1007.71 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk represented by the values specified in paragraph (a) of this section is less or more, respectively, than 3.5 percent, the amount obtained by multiplying such difference by the butterfat differential pursuant to § 1007.73(a) and multiplying the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials and subtract an amount equal to the total value of the plus location differentials, computed pursuant to § 1007.73(b);

(d) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1007.62 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1007.30 and 1007.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1007.60 at

such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1007.60(f) and a credit in the amount specified in § 1007.71(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1007.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1007.10(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location or at the Class II price whichever is higher.

PAYMENTS

§ 1007.70 Producer-settlement fund.

The market administrator shall maintain a producer-settlement fund into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1007.71, 1007.78, and 1007.62 and out of which he shall make appropriate payments required pursuant to §§ 1007.72 and 1007.78.

§ 1007.71 Payments to market administrator.

(a) On or before the 25th day of each month, each handler receiving milk from producers or from a handler pursuant to § 1007.13(d) shall pay to the market administrator for deposit into the producer-settlement fund an amount of money calculated by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class II price for the preceding month;

(b) On or before the 12th day after the end of each month, each handler shall pay to the market administrator for deposit into the producer-settlement fund an amount of money equal to such handler's net obligation for such month as determined pursuant to § 1007.60 less:

(1) Payments made pursuant to paragraph (a) of this section for such month;

(2) An amount computed by multiplying the quantities of receipts of other source milk for which a value is computed pursuant to § 1007.60(f) by the weighted average price computed pursuant to § 1007.61 adjusted by the producer butterfat differential pursuant to § 1007.73(a) and the location differential on nonpool milk pursuant to § 1007.73(c); and

(3) Proper deductions authorized in writing by producers from whom such handler received milk.

§ 1007.72 Payments to producers.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments have been received pursuant to § 1007.71 (a) at not less than the Class II price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer during the month by handlers from whom the appropriate payments have been received pursuant to § 1007.71 (b), such payments by the market administrator to be at not less than the uniform price computed pursuant to § 1007.61, and for base and excess milk at not less than the uniform base and excess prices, respectively, if applicable, subject to the following adjustments:

(1) Butterfat and location differentials pursuant to § 1007.73;

(2) Less payments made pursuant to paragraph (a) of this section;

(3) Less marketing services deductions pursuant to § 1007.76;

(4) Less proper deductions authorized in writing by the producer; and

(5) Adjusted for any error in calculating payment to such individual producer for past months: *Provided*, That if the market administrator has not received full payment from any handler for such month, pursuant to § 1007.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler: *And provided further*, That the market administrator shall make such balance of payment to producers on or before the next date for making payments pursuant to this paragraph following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the second day prior to the date payments are due to individual producers, to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payments has been received, a total amount equal to the sum of the individual payments otherwise payable to such producers pursuant to this section.

§ 1007.73 Butterfat and location differentials to producers and on nonpool milk.

(a) The applicable uniform price to be paid each producer shall be increased or decreased for each one-tenth percent which the average butterfat content of his milk is above or below 3.5 percent, respectively, at a rate computed pursuant to § 1007.52(b);

(b) In making payments to producers pursuant to § 1007.72(b), the uniform price pursuant to § 1007.61 for producer milk received at a pool plant shall be adjusted according to the location of the pool plant, each at the rates set forth in § 1007.53; and

(c) For purposes of computations pursuant to § 1007.71(b) the weighted average price shall be adjusted at the rates set forth in § 1007.53 (not to be less than the value at the Class II price) applicable at the location of the nonpool plant(s) from which the milk was received.

§ 1007.74 Statement to producers.

In making the payments required by § 1007.72(b), the market administrator shall furnish each producer or cooperative association with a supporting statement in such form that it may be retained by the producer or cooperative association which shall show:

(a) The month and the identity of the handler and of the producer;

(b) The total pounds and the average butterfat content of milk delivered by the producer, including the pounds of base and excess milk;

(c) The minimum rate or rates at which payment to the producer or cooperative association is required under the provisions of §§ 1007.72 and 1007.73;

(d) The amount or the rate per hundredweight of each deduction claimed by the handler including any deductions made pursuant to § 1007.76, together with a description of the respective deductions; and

(e) The net amount of payment to the producer or cooperative association.

§ 1007.76 Marketing services.

(a) Except as provided in paragraph (b) of this section, the market administrator in making payments for producer milk received during the month shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1007.77 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1007.45(a) (4) and (9) and the corresponding steps of § 1007.45(b); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1007.78 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in monies due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1007.79 Interest payments.

The unpaid obligation of a handler pursuant to §§ 1007.71, 1007.77, and 1007.78 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

§ 1007.80 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the milk involved in the claims was received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such pay-

ment is claimed, unless such handler within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION**§ 1007.90 Effective time.**

The provisions of this part or any amendment thereto shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1007.91 Suspension or termination.

The Secretary shall suspend or terminate any or all provisions of this part, whenever he finds that they obstruct or do not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1007.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary, execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator or such person pursuant thereto.

§ 1007.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds,

shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS**§ 1007.100 Separability of provisions.**

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1007.101 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

SUBPART, CONSISTING OF PROPOSED BASE PLAN TO BE OPERATED IN CONJUNCTION WITH A FEDERAL MILK MARKETING ORDER REGULATING THE HANDLING OF MILK IN THE GEORGIA MARKETING AREA, IF APPROVED BY PRODUCERS

DEFINITIONS**§ 1007.111 Order.**

"Order" means this Part 1007, regulating the handling of milk in the Georgia marketing area. All terms and provisions of said order shall be in effect except as modified herein.

§ 1007.112 New producer.

"New producer" means a person meeting the qualifications of § 1007.15 of the order, but who commenced delivering milk to a handler after September 1, 1967, and has not delivered milk for 5 full months commencing September 1 of any year subsequent to 1967.

§ 1007.113 Base milk.

"Base milk" means milk received during the month from a producer which is not in excess of his daily base for the month multiplied by the number of days in such month.

§ 1007.114 Excess milk.

"Excess milk" means milk received from a producer during the month which is not base milk.

COMPUTATION OF DAILY BASE**§ 1007.115 Computation of daily base.**

(a) The market administrator shall compute a daily base for each producer except a new producer by dividing by 153 his total deliveries of milk during the 5 months beginning September 1, 1967, and September 1 of any subsequent year.

(b) The market administrator shall compute a daily base for each new producer by dividing by 153 his total deliveries of milk during all or any portion of the first 5 months next following the date he became a new producer.

(c) The market administrator shall compute a daily base for each producer delivering milk to a distributing plant or supply plant which becomes a pool plant pursuant to § 1007.10 of the order subsequent to the effective date of this

subpart, in the same manner as prescribed for other producers pursuant to paragraphs (a) and (b) of this section.

RULES PERTAINING TO DAILY BASE

§ 1007.116 Rules pertaining to daily base.

The following rules shall apply with respect to the daily base for producers:

(a) If a producer operates more than one farm and milk is received from each at a pool plant or by a cooperative association, he shall establish a daily base for each such farm.

(b) Only one daily base shall be established with respect to milk marketed from a farm; however, upon request that the daily base for any farm be apportioned among two or more persons marketing milk from such farm, it may be so apportioned in accordance with an agreement signed by such parties and filed with the market administrator.

(c) If a producer moves his herd and equipment from one farm to another, such move shall not affect his daily base.

(d) In the event of death of a person holding a daily base, such daily base shall pass to his estate or other successor in interest.

(e) If a farmer ceases to be a producer and does not transfer his daily base in accordance with the provisions of § 1007.117 within 90 days following his last delivery of milk, such daily base shall not be subject to transfer to another person, and shall be forfeited.

(a) A daily base or portion thereof, if transferred from one person to another in accordance with the provisions of § 1007.117, shall not again be transferred within 6 months unless the entire daily base held by such person is transferred and the person ceases to be a producer.

(g) Deliveries of milk from a farm shall be considered to be deliveries by the person operating the farm on the effective date of this subpart, and no daily base shall be computed for any other person from deliveries of milk from such farm.

§ 1007.117 Transfers.

A daily base may be transferred in its entirety or in any amount not less than 100 pounds from one producer to another producer, or to a person who will become a producer within 30 days of the time such transfer is made, under the following conditions:

(a) The market administrator is notified in writing by the producer holding the daily base on or before the last day of the month of transfers of the name of the person to whom the daily base or portion thereof is to be transferred and the effective date of such transfer, which shall be on the first day of any subsequent month.

(b) It is established to the satisfaction of the market administrator that the transfer of such daily base is bona fide and not for the purpose of evading any provisions of the order.

§ 1007.118 Base plan reports.

(a) The market administrator shall promptly notify each handler of the amount of daily base held by each producer and new producer delivering milk to such handler.

(b) On or before February 10 of each year, the market administrator shall notify each producer of the amount of his daily base to be effective February 1 of such year.

(c) On or before the 10th day of each month, the market administrator shall notify each new producer of the amount of his daily base to be effective for the month.

(d) On or before the 10th day of each month, the market administrator shall publicly announce by posting in a conspicuous place in his office, and by such other means as he deems appropriate the prices for base milk and excess milk for the preceding month.

COMPUTATION OF PRICES FOR BASE MILK AND EXCESS MILK

§ 1007.119 Computation of prices for base milk and excess milk.

For each month the market administrator shall compute a price for base milk and a price for excess milk, each of 3.5 percent butterfat content, as follows:

(a) Compute the aggregate value of excess milk for all handlers included in the computation pursuant to § 1007.61 (a) of the order, by:

(1) Multiplying the hundredweight quantity of such milk which does not exceed the total quantity of producer milk received by such handlers and assigned Class II utilization by the Class II price;

(2) Multiplying the remaining quantity of excess milk which does not exceed the total quantity of producer milk received by such handlers and assigned Class I utilization by the Class I price; and

(3) Adding together the resulting amounts, dividing such total value by the hundredweight of such excess milk and rounding to the nearest whole cent.

(b) Compute the aggregate value of base milk for all handlers included in the computation pursuant to § 1007.61 (a) of the order by subtracting the total value of excess milk, determined by multiplying the excess price by the hundredweight of excess milk, from an amount determined by multiplying the total pounds of producer milk pursuant to § 1007.60 of the order by the uniform price computed pursuant to § 1007.61 of the order and dividing such result by the total hundredweight of base milk.

PAYMENTS TO PRODUCERS

§ 1007.120 Time and method of payment.

In lieu of payments provided by § 1007.72 of the order, they shall be made as follows:

(a) Except as provided in paragraph (b) of this section, each pool handler

on or before the 15th day after the end of each month shall make payment to each producer for milk which was received from such producer during the month at not less than the price for base milk computed pursuant to § 1007.119(b) with respect to base milk received from such producer, and not less than the excess price determined pursuant to § 1007.119(a) for excess milk received from such producer subject to the following adjustments:

(1) The butterfat differential computed pursuant to § 1007.73 of the order;

(2) The location differential computed pursuant to § 1007.73 of the order, with respect to base milk;

(3) Less payments made pursuant to § 1007.72(a) of the order; and

(4) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 of the order for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the third day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such associations as determined by the market administrator, an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section; and

(c) In the case of milk received by a handler from a cooperative association in its capacity as a handler, such handler shall on or before the third day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler.

Proposed by Pet, Inc.; Beatrice Foods Co.; The Borden Co.; Dempsey Brothers; Colonial Dairy; Foremost Dairies of the South, Division of Home Town Foods; Kimball Dairy; Kinnett Dairies, Inc.; Golden Glow Dairy; Sealtest Foods, Division, National Dairy Products Corp.:

Proposal No. 2. Marketing area: "Marketing area" means all the territory within the boundaries of the following counties:

Appling.	Barrow.
Atkinson.	Bartow.
Bacon.	Ben Hill.
Baker.	Berrien.
Baldwin.	Bibb.
Banks.	Bleckley.

Brantley.
Brooks.
Bryan.
Bulloch.
Burke.
Butts.
Calhoun.
Camden.
Candler.
Carroll.
Charlton.
Chatham.
Chattahoochee.
Cherokee.
Clarke.
Clay.
Clayton.
Clinch.
Cobb.
Coffee.
Colquitt.
Columbia.
Cook.
Coweta.
Crawford.
Crisp.
Dawson.
Decatur.
De Kalb.
Dodge.
Dooly.
Dougherty.
Douglas.
Early.
Echols.
Effingham.
Elbert.
Emanuel.
Evans.
Fayette.
Floyd.
Forsyth.
Franklin.
Fulton.
Gilmer.
Glascock.
Glynn.
Gordon.
Grady.
Greene.
Gwinnett.
Habersham.
Hall.
Hancock.
Haralson.
Harris.
Hart.
Heard.
Henry.
Houston.
Irwin.
Jackson.
Jasper.
Jeff Davis.
Jefferson.
Jenkins.
Johnson.
Jones.
Lamar.
Lanier.

Laurens.
Lee.
Liberty.
Lincoln.
Long.
Lowndes.
Lumpkin.
McDuffie.
McIntosh.
Macon.
Madison.
Marion.
Meriwether.
Miller.
Mitchell.
Monroe.
Montgomery.
Morgan.
Muscogee.
Newton.
Oconee.
Oglethorpe.
Paulding.
Peach.
Pickens.
Pierce.
Pike.
Polk.
Pulaski.
Putnam.
Quitman.
Rabun.
Randolph.
Richmond.
Rockdale.
Schley.
Screven.
Seminole.
Spaulding.
Stephens.
Stewart.
Sumter.
Talbot.
Taliaferro.
Tattall.
Taylor.
Telfair.
Terrell.
Thomas.
Tift.
Toombs.
Towns.
Treutlen.
Troup.
Turner.
Twiggs.
Union.
Upson.
Walton.
Ware.
Warren.
Washington.
Wayne.
Webster.
Wheeler.
White.
Wilcox.
Wilkes.
Wilkinson.
Worth.

all in the State of Georgia; including all waterfront facilities connected therewith and all territory wholly or partially therein occupied by government (municipal, State, or Federal) reservations, installations, institutions, and other similar establishments.

Proposal No. 3. Distributing pool plant: "Distributing pool plant" is a distributing plant from which not less than 50 percent of the total Grade A fluid milk products received at the plant during the month is disposed of as Class I and not less than 25 percent of such receipts

is disposed of in the marketing area as Class I.

Proposal No. 4. Class I price: For the first 18 months from the effective date of this section, the Class I price, 3.5 percent butterfat basis, applicable at plants located within the marketing area shall be \$6.67 per hundredweight: *Provided*, That the Class I price applicable at plants located in Floyd and Bartow Counties, Ga., shall not exceed the Chattanooga, Tenn., order (Part 1090) Class I price, 3.5 percent butterfat basis, by more than 15 cents per hundredweight.

Proposal No. 5. Base-excess plan: Any base-excess plan provided in the order shall incorporate the following features and principles:

(a) The base forming period shall be the period August 1 through the following December 31.

(b) The daily average base for each producer shall be computed by dividing his total deliveries of milk during the months of August through December immediately preceding by the number of days from the first day of delivery by such producer during said months to the last day of December, inclusive, but not less than 120 days.

(c) (i) Payments shall be made to producers for deliveries during the months of July through December on the basis of the marketwide uniform price.

(ii) Payments shall be made to producers for deliveries during the months of January through June on the basis of the uniform base price and the uniform excess price applied to the base milk and the excess milk, respectively, of such producer.

Proposal No. 6. Producer-handler: "Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant from which the Class I disposition (except that represented by nonfat solids used in the fortification of fluid milk products) is entirely from his own farm production;

(b) Receives no fluid milk products from sources other than his own farm production; and

(c) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all fluid milk products handled and the operation of the processing and packaging business are his personal enterprise and risk: *Provided*, That any such person whose Class I sales during the month exceed 30,000 pounds shall not qualify as a producer-handler, but his milk production operation shall be subject to the same treatment and control as is practiced under this part with respect to other milk producer operations and his handler operation shall be subject to the same treatment and control as is practiced under this part with respect to other handler operations.

Proposal No. 7. Reports: Provide in the order that:

(a) The handler reports of receipts and utilization are to be made on or before the 10th day after the end of each month.

(b) The producer payroll reports by handlers for monthly deliveries are to be made on or before the ninth day of the month.

(c) The report of producer milk receipts for the first fifteen days is to be made on the 24th day of the month.

(d) The reports to be made to cooperative associations with handler status, by reason of controlling the transportation of milk of its members from farm to plant, are to be made on or before the sixth day of the month.

(e) Conform the dates specified in the order for reports by the market administrator, for the announcement by the market administrator of uniform prices, for making payments, etc., to said dates for reporting by the handler.

Proposed by R. L. Mathis Certified Dairy Co.:

Proposal No. 8.

§ 1007.14 Producer-handler.

(a) "Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk on routes within the marketing area, and who receives no fluid milk products from other dairy farmers or from any source other than a pool plant or, any person who processes and packages certified milk from his own farm production and disposes of such milk on routes within the marketing area and who receives no certified milk from any source except his certified herd: *Provided*, That any person who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

(b) In the case of a producer-handler of certified milk, who is also a handler of regular Grade A milk, the receipts from the certified dairy herd shall be considered as nonproducer milk pursuant to § 1007.16, and fluid milk product sales of certified milk shall be excluded from Class I sales of such handler's plant pursuant to § 1007.41.

Copies of this notice may be procured from the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on May 15, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-5970; Filed, May 17, 1968; 8:49 a.m.]

Office of the Secretary
[7 CFR Part 18]
STATE EXTENSION SERVICES
Equal Opportunity

Notice is hereby given that the Secretary of Agriculture, under the authority contained in section 9, 38 Stat. 374, as amended; 7 U.S.C. 348, plans the addition of a new Part 18 to Title 7 of the Code of Federal Regulations.

The proposed new Part 18 provides a procedure to assure that the Cooperative Extension Service in each State provides equal opportunity in employment to each individual without regard to race, color, national origin, sex, or religion.

Interested persons are invited to submit suggestions for improvement of the proposed new part for consideration prior to issuance to the Office of the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days after date of publication of this notice in the FEDERAL REGISTER.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

The proposed new part is set forth below.

GEORGE L. MEHREN,
Assistant Secretary of Agriculture.

MAY 15, 1968.

Subtitle A of Title 7, CFR, is hereby amended by adding the following new Part 18:

PART 18—EQUAL EMPLOYMENT OPPORTUNITY IN THE STATE COOPERATIVE EXTENSION SERVICES

- Sec.
18.1 Definitions.
18.2 Purpose and applicability.
18.3 Development and adoption of equal employment opportunity programs.
18.4 Elements of program.
18.5 Complaints.
18.6 Appeals.
18.7 Reports.
18.8 Noncompliance.
18.9 Sanctions.

AUTHORITY: The provisions of this Part 18 issued under 5 U.S.C. 301, and Sec. 1-10, 38 Stat. 372, as amended; 7 U.S.C. 341-349.

§ 18.1 Definitions.

For the purpose of this part:

(a) "Secretary" means the Secretary of Agriculture of the United States or his designee.

(b) "Cooperative Extension Service" means the Cooperative Extension Service of each Land-Grant University.

(c) "President" means the President or chief executive of each Land-Grant University or his designee.

(d) "Discrimination" includes discrimination on the basis of race, color, national origin, sex, or religion.

(e) "Employment" includes hiring, assignment, transfer, promotion, compensation, discipline, and discharge and all other conditions, terms and privileges of employment.

(f) "Program" means a comprehensive Equal Employment Opportunity plan submitted by a President in satisfaction of the requirements of § 18.3.

§ 18.2 Purpose and applicability.

(a) *Purpose.* This part provides a procedure to assure that Cooperative Extension Service provides equal opportunity in employment to each individual without regard to race, color, national origin, sex, or religion.

(b) *Applicability.* The regulations in this part apply to any land-grant university operating a Cooperative Extension Service.

§ 18.3 Development and adoption of equal employment opportunity programs.

(a) *Submission.* Within 90 days of the effective date of the regulations in this part, the President shall submit to the Secretary a positive continuing program including a procedure to assure that employment is provided without discrimination for all positions in the Cooperative Extension Service.

(b) *Development.* The President may consult with the Secretary at any time regarding the development and evaluation of the program in order to better effectuate the purpose of the regulations in this part. The program may be a part of a general program establishing employment procedures for employees of the university and may cover other rights and privileges of employees.

(c) *Approval.* The Secretary may approve or reject the proposed program. If the program is rejected, the President shall submit a program satisfactory to the Secretary within 30 days of the rejection.

(d) *Amendment.* The President may initiate or the Secretary may recommend amendments to the program to improve its effectiveness. If the Secretary, at any time finds that a program, as implemented, does not achieve the purposes described in § 18.2, he shall inform the President in writing. The President shall submit corrective amendments to the Secretary for approval within 30 days of receiving such notice. A proposed amendment shall be processed in the same manner as a proposed program.

(e) *Effective date.* The program shall be made effective by the President not later than 15 days from his receipt of approval of the Secretary.

§ 18.4 Elements of program.

A satisfactory program shall include:

(a) A statement of policy prohibiting discrimination in employment;

(b) An administrative procedure enforcing that policy;

(c) A positive affirmative action plan designed to bring about equal opportunity in employment;

(d) A procedure for identifying and eliminating employment practices tending to create or continue discrimination in employment;

(e) A procedure for evaluating the success of the program;

(f) A procedure to assure that counties and other political subdivisions

which participate in extension work comply with the program;

(g) Adequate provision for publicizing the program to include dissemination of information concerning the program to each new Cooperative Extension Service employee and to every other employee at least annually, reference to the program in employee handbooks or similar employee training materials and the posting of a copy of this part and the pertinent parts of the program in a conspicuous place in each Cooperative Service Office, together with a designation of where complaints can be filed;

(h) A procedure for processing complaints assuring no less than minimum rights prescribed in § 18.5; and

(i) Adequate sanctions for program enforcement and for the protection of complainants, employees, witnesses, and representatives.

§ 18.5 Complaints.

A program shall contain provisions for the processing of complaints under the following minimum standards:

(a) *Recording.* A record shall be kept of all complaints filed. A report on the filing and preliminary disposition of any complaint shall be forwarded to the Secretary within 30 days of the recording of the complaint. The record shall include any statement from any complainant withdrawing a complaint indicating why the complaint is being withdrawn. The report of disposition on a withdrawn complaint shall include a statement of the circumstances relating to the withdrawal.

(b) *Informal procedures.* The President shall designate a person or persons to act in an effort to mediate or conciliate informal complaints. Officials of the Department of Agriculture may assist the President by providing mediation or conciliation assistance at the request of the President on a regular basis or otherwise.

(c) *Formal complaints.* If informal procedures do not attain a result satisfactory to the complainant or if the complainant does not desire to follow the informal procedure, he may file a formal complaint. A formal complaint shall be submitted in writing and state the basis for the complaint but the filing of a complaint shall require no other formality. Where appropriate, the President may require a statement of the complainant describing the conduct complained of with greater particularity.

(1) *Who may file.* A complaint may be filed by an employee, former employee, or applicant for employment in the Cooperative Extension Service who believes that discrimination in employment has been practiced against him or that an employment practice in the Extension Service has or will result in discrimination in employment against him. A complaint may also be filed by an employee, former employee, or applicant for employment in CES or by any organization, charging that the Cooperative Extension Service has discriminated in employment against a class of individuals on a systematic basis.

(2) *Right of representation.* A qualified complainant may designate in writing, an individual or an organization to represent him in the processing of his complaint, and, if he wishes, is entitled to the advice of counsel at his cost at all stages in the proceeding. If the representative designated by the complainant is an employee of the U.S. Department of Agriculture, or of a Cooperative Extension Service, such employee, as well as an employee-complainant, shall have a reasonable amount of official time with pay for the purpose of appearing at any hearing on the complaint or conciliation effort. The rights and privileges set forth in this paragraph shall also be available to any person whose alleged conduct is the cause of the complaint.

(3) *Where filed.* Complaints may be filed with the President or an official designated by him or with the Secretary. Complaints filed with the Secretary shall be promptly forwarded to the President or his designee. A complaint shall be deemed to have been filed on the date postmarked or delivered, whichever is earlier.

(4) *When filed.* A complaint shall be submitted within 30 days of the conduct giving rise to the complaint. Time limitations in this part are not jurisdictional. The President shall extend the time limit for good cause.

(5) *Hearing.* A complainant may request a hearing which shall be transcribed or recorded. The hearing shall be conducted promptly, but in no case more than 90 days from the date the hearing is requested, during regular working hours in the county where the complainant works or resides, or at a time and place agreed to by the complainant. The President, the complainant or any person whose alleged conduct is the cause of the complaint shall have the right to call and cross-examine witnesses under oath. The hearing shall be conducted by an impartial board or hearing officer who shall submit a proposed decision including findings of fact, conclusions, and recommendations for action, within 30 days of the conclusion of the hearing, to the President. The President shall approve the proposed decision, remand to the hearing board or officer for further action, or otherwise dispose of it within 10 days of its submission to him, and notify the complainant of his disposition and his right of appeal and the time within which appeal should be made.

§ 18.6 Appeals.

Within 30 days of notification of the disposition by the President, or within 30 days of any failure of the President to accept a complaint not timely filed or to act on a complaint in accordance with the program, the complainant may appeal to the Secretary. Any appeal shall be in writing. The President upon request by the Secretary, shall furnish to the Secretary the complete file, including the transcript of any hearing together with whatever other information the Secretary requests. The Secretary may review the file on the record,

request supplemental information from the President, order further investigation by the Office of the Inspector General, USDA, or hold a hearing de novo under such procedure as he determines appropriate. The Secretary may affirm the decision of the President or remand the proceeding to him for action in accordance with the consideration on the appeal. A copy of the Secretary's decision will be furnished the complainant.

§ 18.7 Reports.

Within 6 months of the program going into effect and thereafter at least annually, the President shall submit a summary report to the Secretary on implementation and operation of the program. The Secretary may request additional reports as he deems advisable.

§ 18.8 Noncompliance.

A university conducting a Cooperative Extension Service will be in violation of this part:

(a) If the President fails to file a program satisfactory to the Secretary under § 18.3, or fails to file an appropriate amendment requested under § 18.3(d);

(b) If the Secretary finds that a university has failed to administer an approved program according to its terms;

(c) If the university or the President does not carry out the decision of the Secretary on an appeal under § 18.6;

(d) If the Secretary finds that any officer of the university has intimidated, coerced, or improperly pressured a complainant, employee, representative or witness exercising the rights given him by this part or any program adopted pursuant thereto, and that corrective action has not been taken.

§ 18.9 Sanctions.

(a) When the Secretary finds that any noncompliance with this part has occurred, he may initiate action to refuse to authorize payment of funds for the Cooperative Extension Service, or take other appropriate action provided by law.

(b) The remedies available to the Secretary under this part, and remedies made available to any person under a program adopted pursuant to this part are in addition to any others which may be available under law.

[F.R. Doc. 68-5971; Filed, May 17, 1968; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 18]

IMITATION MILKS AND CREAMS

Standards of Identity and Quality

Notice is given that the Commissioner of Food and Drugs, on his own initiative, proposes the establishment of standards of identity and standards of quality for imitation milks and creams by adding four new sections to Part 18 as follows:

§ 18.550 Imitation milks; identity; label statement of optional ingredients.

(a) Imitation milks are the foods that are not filled milks as defined in 21 U.S.C. 61(c) but which are made in semblance of and intended to be used in substitution for skim milk, low-fat milk, part-skimmed milk, milk, and high-fat milk in single strength liquid, concentrated, dried, or frozen form or half-and-half (milk and cream) in liquid form containing one or more of the optional ingredients listed in paragraph (b) of this section and having the edible oil or fat content specified in paragraph (d) of this section.

(b) The optional ingredients referred to in paragraph (a) of this section are:

(1) (i) Any safe and suitable substances that impart to the food a semblance of those milks named in paragraph (a) of this section, which may include but are not limited to substances derived from milk. For the purposes of this section the words "derived from milk" mean substances or food-grade chemicals derived from milk by physical and/or chemical treatment so that the resultant product is not milk, skim milk, or cream as described in the definition of filled milk (21 U.S.C. 61(c)).

(ii) Substances derived from milk as provided for in subdivision (i) of this subparagraph may include, but are not limited to, casein, salts of casein, milk proteins (coprecipitates of casein, lactalbumins, and lactoglobulins), whey, whey modified by partial or complete removal of lactose or minerals, or both, and lactose.

(2) Any safe and suitable ingredients including, but not limited to, emulsifiers, stabilizers, preservatives, artificial colors, and artificial flavors that impart to the foods a semblance of those milks named in paragraph (a) of this section. Such ingredients are deemed to be safe if they are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act, or if they are food additives as so defined, if they are used in conformity with regulations established pursuant to section 409 of the act. Artificial colors are deemed to be safe if they are used in accordance with color additive regulations established pursuant to section 706 of the act.

(c) The food shall be pasteurized, sterilized, or sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

(d) (1) Imitation skim milk is the food complying with the provisions of paragraph (a) of this section and made in semblance of skim milk. The oil or fat content is less than 0.5 percent by weight.

(2) Imitation low-fat milk is the food complying with the provisions of paragraph (a) of this section and made in semblance of low-fat milk. The oil or fat content is not less than 0.5 percent but less than 2.0 percent by weight.

(3) Imitation part-skimmed milk is the food complying with the provisions of paragraph (a) of this section and made in semblance of part-skimmed milk. The oil or fat content is not less than 2.0 percent but less than 3.25 percent by weight.

(4) Imitation milk is the food complying with the provisions of paragraph (a) of this section and made in semblance of milk. The oil or fat content is not less than 3.25 percent but less than 6.0 percent by weight.

(5) Imitation high-fat milk is the food complying with the provisions of paragraph (a) of this section and made in semblance of milk but having a higher fat content. The oil or fat content is not less than 6.0 percent but less than 10.5 percent by weight.

(6) Imitation concentrated milks are the foods complying with the provisions of paragraph (a) of this section and from which part of the moisture has been removed and which upon addition of water or other fluids in accordance with label directions result in one of the foods named in and meeting the requirements of subparagraph (1), (2), (3), (4), or (5) of this paragraph.

(7) Imitation half-and-half is the food complying with the provisions of paragraph (a) of this section and made in semblance of half-and-half (prepared from milk and cream). The oil or fat content is not less than 10.5 percent by weight.

(8) Imitation dried milks are the dry foods complying with the provisions of paragraph (a) of this section and from which substantially all of the moisture has been removed and which upon addition of water or other fluids in accordance with label directions result in one of the foods named and meeting the requirements of subparagraph (1), (2), (3), (4), or (5) of this paragraph.

(e) (1) The names of the imitation milks are those provided for those foods specified in paragraph (d) of this section except as modified in subparagraph (4) of this paragraph.

(2) The optional ingredients used, as provided for in paragraph (b) of this section, shall be declared on the principal display panel or panels of the label by their common names and shall be displayed with such prominence and conspicuousness as to render them likely to be read and understood by ordinary individuals under customary conditions of purchase, except that in lieu of the common names of flavors or colors the words "artificial flavor added" or "artificial color added," as appropriate, may be used. Carotene added for its vitamin A contribution shall also be declared on the label as an artificial color.

(3) Any of the foods, other than dried imitation milks, as provided for in this section when prepared in the frozen form shall have the word "frozen" preceding the name of the food.

(4) (i) Names of the foods provided for in paragraph (d) (6) of this section shall be modified to denote the particular imitation food which is prepared when it is reconstituted in accordance with label directions; for example, "concentrated imitation skim milk."

(ii) Names of the foods provided for in paragraph (d) (8) of this section shall be modified to denote the particular imitation food which is prepared when it is reconstituted in accordance with label

directions; for example, "dried imitation skim milk."

§ 18.551 Imitation creams; identity; label statement of optional ingredients.

(a) Imitation creams are the foods that are not filled milks as defined in 21 U.S.C. 61(c) but which are made in semblance of and intended to be used in substitution for light cream (coffee cream, table cream), light whipping cream, and heavy cream (heavy whipping cream) in liquid or frozen form containing one or more of the optional ingredients provided for in paragraph (b) of this section and having the edible oil or fat content specified in paragraph (d) of this section.

(b) The optional ingredients referred to in paragraph (a) of this section are:

(1) (i) Any safe and suitable substances that impart to the food a semblance of those creams named in paragraph (a) of this section, which may include but are not limited to substances derived from milk. For the purposes of this section the words "derived from milk" mean substances or food-grade chemicals derived from milk by physical and/or chemical treatment so that the resultant product is not milk, skim milk, or cream as described in the definition of filled milk (21 U.S.C. 61(c)).

(ii) Substances derived from milk as provided for in subdivision (i) of this subparagraph may include, but are not limited to, casein, salts of casein, milk proteins (coprecipitates of casein, lactalbumins, and lactoglobulins), whey, whey modified by partial or complete removal of lactose or minerals, or both, and lactose.

(2) Any safe and suitable ingredients including, but not limited to, emulsifiers, stabilizers, preservatives, artificial colors, and artificial flavors that impart to the foods a semblance of those creams named in paragraph (a) of this section. Such ingredients are deemed to be safe if they are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act, or if they are food additives as so defined, if they are used in conformity with regulations established pursuant to section 409 of the act. Artificial colors are deemed to be safe if they are used in accordance with color additive regulations established pursuant to section 706 of the act.

(c) The food shall be pasteurized, sterilized, or sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

(d) (1) Imitation light cream, imitation coffee cream, imitation table cream is the food complying with the provisions of paragraph (a) of this section and made in semblance of light cream, coffee cream, table cream. The oil or fat content is not less than 18 percent by weight.

(2) Imitation light whipping cream is the food complying with the provisions of paragraph (a) of this section and made in semblance of light whipping cream. The oil or fat content is not less than 30 percent by weight.

(3) Imitation heavy cream, imitation heavy whipping cream is the food com-

plying with the provisions of paragraph (a) of this section and made in semblance of heavy cream, heavy whipping cream. The oil or fat content is not less than 36 percent by weight.

(e) (1) The names of the imitation creams are those provided for those foods specified in paragraph (d) of this section.

(2) The optional ingredients used, as provided for in paragraph (b) of this section, shall be declared on the principal display panel or panels of the label by their common names and shall be displayed with such prominence and conspicuousness as to render them likely to be read and understood by ordinary individuals under customary conditions of purchase, except that in lieu of the common names of flavors or colors the words "artificial flavor added" or "artificial color added," as appropriate, may be used. Carotene added for its vitamin A contribution shall also be declared on the label as an artificial color.

(3) Any of the foods provided for in this section when prepared in the frozen form shall have the word "frozen" preceding the name of the food.

§ 18.552 Imitation milks; quality; label statement of substandard quality.

(a) (1) Except for imitation half-and-half as provided for in subparagraph (2) of this paragraph, the following is the standard of quality for imitation milks. On the basis of an 8-fluid ounce serving, if necessary reconstituted in accordance with label directions, the imitation milks shall contain nutrients as follows in amounts not less than those specified:

Nutrient	Amount
Protein (biological value equivalent to casein).	8.5 grams.
Calcium -----	290 milligrams.
Phosphorus -----	220 milligrams.
Vitamin A -----	375 U.S.P. units.
Riboflavin -----	0.40 milligrams.
Optionally, vitamin D -----	100 U.S.P. units.
when added, not less than.	

(2) On the basis of an 8-fluid ounce portion, imitation half-and-half shall contain nutrients as follows in amounts not less than those specified:

Nutrient	Amount
Protein (biological value equivalent to casein).	8 grams.
Calcium -----	259 milligrams.
Phosphorus -----	205 milligrams.
Vitamin A -----	1,190 U.S.P. units.
Riboflavin -----	0.39 milligrams.

(b) If the amounts of nutrients in imitation milks fall below any of the levels specified in paragraph (a) of this section, the label shall bear the statement "Below standard in quality-----" the blank to be filled in with a statement declaring the deficient nutrient or nutrients; for example, "low in protein" or "contains no vitamin A." The arrangement of words, size of letters, and the size of the rectangle surrounding such words shall appear on the label in accordance with the provisions of § 10.7(a) of this chapter. Such statement shall immediately and conspicuously precede or follow, without intervening written,

printed, or graphic matter, the name of the food and any words and statements required or authorized with such name by § 18.550.

§ 18.553 Imitation creams; quality; label statement of substandard quality.

(a) The following is the standard of quality for imitation creams. On the basis of an 8-fluid ounce portion, the imitation creams shall contain nutrients as follows in amounts not less than those specified:

Nutrient	Light cream	Light whipping cream	Heavy cream
Protein—biological value equivalent to casein (grams).....	7	6	5
Calcium (milligrams).....	238	196	164
Phosphorus (milligrams).....	162	161	140
Vitamin A (U.S.P. units).....	2,140	3,200	3,800
Riboflavin (milligrams).....	0.35	0.29	0.24

(b) If the amounts of nutrients in imitation creams fall below those levels specified in paragraph (a) of this section, the label shall bear the statement "Below standard in quality—", the blank to be filled in with a statement declaring the deficient nutrient or nutrients; for example, "low in protein" or "contains no vitamin A." The arrangement of words, size of letters, and the size of the rectangle surrounding such

words shall appear on the label in accordance with the provisions of § 10.7(a) of this chapter. Such statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name of the food and any words and statements required or authorized with such name by § 18.551.

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), all interested persons are invited to submit their views in writing, preferably in quintuplicate, regarding this proposal within 60 days following the date of publication of this notice in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, and may be accompanied by a memorandum or brief in support thereof.

Dated: May 13, 1968.

JAMES L. GODDARD,

Commissioner of Food and Drugs.

[F.R. Doc. 68-5953; Filed, May 17, 1968; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[10 CFR Part 140]

FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

Criteria for Determination of an Extraordinary Nuclear Occurrence

Correction

In F.R. Doc. 68-5515 appearing at page 6978 in the issue of Thursday, May 9, 1968, the table under § 140.84(b) should read as follows:

TOTAL SURFACE CONTAMINATION LEVELS^a

Alpha emission from transuranic isotopes.	0.35 microcuries per square meter.
Alpha emission from isotopes other than transuranic isotopes.	3.5 microcuries per square meter.
Beta or gamma emission.	4 millirads/hour @ 1 cm. (measured through not more than 7 milligrams per square centimeter of total absorber).

^aThe maximum levels (above background), observed or projected, 8 or more hours after initial deposition.

Notices

DEPARTMENT OF STATE

Agency for International Development

DEPUTY ASSISTANT ADMINISTRATORS AND ASSOCIATE ASSISTANT ADMINISTRATOR FOR ADMINISTRATION

Delegation of Authority

Pursuant to the authority delegated to me, I hereby redelegate to the Deputy Assistant Administrators and Associate Assistant Administrator for Administration, to the extent consistent with law, all the authorities now or hereafter delegated to the Assistant Administrator for Administration by Delegation of Authority from the Administrator or Deputy Administrator including those authorities conferred by Delegations of Authority Nos. 1, 3, 19, 27, 36, and 56, and any other authorities, powers, or functions under any Agency Regulation, Policy Determination, Manual Orders, Directive, Notice, or Issuance.

The Redlegation of Authority from the Assistant Administrator for Administration to the Deputy and Associate Assistant Administrator for Administration dated December 22, 1967, is hereby revoked. This Delegation of Authority shall be effective immediately.

Dated: May 9, 1968.

H. REX LEE,
Assistant Administrator
for Administration.

[F.R. Doc. 68-5946; Filed, May 17, 1968;
8:47 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C-3900]

COLORADO

Notice of Proposed Classification of Public Lands for Multiple-Use Management

MAY 13, 1968.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18), and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify for multiple-use management the public lands described.

2. Publications of this notice:

(a) Has the effect of segregating all public lands described in this notice from appropriation only under the agricultural land laws (43 U.S.C., Parts 7 and 9; 25 U.S.C. sec. 334); Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682 (a) and (b)); from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171); the Public Land Sale Act of September 19, 1964 (43 U.S.C. 1421-27); and

(b) Further segregates the land described in paragraph 4 of this notice from operation of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869-1 to 869-4); and

(c) Further segregates the lands described in paragraph 5 of this notice from the operation of the General Mining Laws (30 U.S.C. 21), and the Materials Act of July 31, 1947, as amended, but not from the Mineral Leasing Laws.

The lands shall remain open to all other applicable forms of appropriation including the mining and mineral leasing laws; and exchanges under section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g). As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

3. The public lands proposed for classification are located within the following described area and are shown on maps on file in the Grand Junction District Office, Bureau of Land Management, Federal Building, Fourth and Rood, Grand Junction, Colo.; and the Land Office, Bureau of Land Management, 1961 Stout Street, Denver, Colo.

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO

T. 51 N., R. 19 W.,
Sec. 15, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 22, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 26, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The above areas aggregate approximately 60 acres of public land.

4. As provided in paragraph 2(b) above, the following lands are further segregated from appropriation under the Recreation and Public Purposes Act of June 14, 1926, as amended:

SIXTH PRINCIPAL MERIDIAN, COLORADO

MESA COUNTY

T. 14 S., R. 101 W.,
Secs. 26 and 27, those portions below north rim of Unaweep Canyon;
Secs. 31 to 34, inclusive, those portions below north rim of Unaweep Canyon;
Sec. 35, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 36, W $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 14 S., R. 102 W.,
Secs. 30 to 32, inclusive, those portions below north rim of Unaweep Canyon;
Secs. 35 and 36, those portions below north rim of Unaweep Canyon.
T. 14 S., R. 103 W.,
Secs. 25 to 27, inclusive, those portions below north rim of Unaweep Canyon;
Secs. 33 to 36, inclusive, those portions below north rim of Unaweep Canyon.
T. 14 S., R. 104 W.,
Secs. 33 to 35, inclusive, those portions below north rim of Unaweep Canyon.
T. 15 S., R. 101 W.,
Secs. 5 and 6.

T. 15 S., R. 102 W.,

Sec. 1;
Secs. 2 to 5, inclusive, those portions below north rim of Unaweep Canyon;
Secs. 6 to 10, inclusive;
Sec. 11, portion below north rim of Unaweep Canyon;
Secs. 12, 13, and 15.

T. 15 S., R. 103 W.,

Secs. 1 and 2;
Secs. 3 to 6, inclusive, those portions below north rim of Unaweep Canyon;
Sec. 7;
Sec. 8, portion below north rim of Unaweep Canyon;
Secs. 9 to 36, inclusive.

T. 15 S., R. 104 W.,

Secs. 1 to 6, inclusive, those portions below north rim of Unaweep Canyon;
Secs. 7 to 10, inclusive;
Secs. 11 and 12, those portions below north rim of Unaweep Canyon;
Secs. 13 to 36, inclusive.

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO MONTROSE COUNTY

T. 48 N., R. 18 W.,

Sec. 2, lots 3, 4;
Sec. 3, lots 2, 3, 4, 39, 40, 41;
Sec. 4, lots 1, 8;
Sec. 5, lots 1, 2, 3, 4, 6;
Sec. 6, lots 1 to 6, inclusive.

T. 48 N., R. 19 W.,

Sec. 1, N $\frac{1}{2}$ N $\frac{1}{2}$.

T. 49 N., R. 17 W.,

Sec. 19, W $\frac{1}{2}$;

Sec. 30, W $\frac{1}{2}$ W $\frac{1}{2}$.

T. 49 N., R. 18 W.,

Secs. 19 to 35, inclusive;

Sec. 36, W $\frac{1}{2}$.

T. 49 N., R. 19 W.,

Secs. 22 to 27, inclusive;
Sec. 28, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 29, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 36.

MESA COUNTY

T. 49 N., R. 17 W.,

Sec. 4, N $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 5, lots 1, 2, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$;
Secs. 6 and 7;
Sec. 8, lot 4, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 17, lots 1 to 4, inclusive;
Sec. 18;

Sec. 19, N $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 49 N., R. 18 W.,

Secs. 1 to 24, inclusive.

T. 49 N., R. 19 W.,

Secs. 1, to 18, inclusive;

Secs. 22 to 24, inclusive.

T. 49 N., R. 20 W.,

Sec. 1.

T. 50 N., R. 17 W.,

Sec. 7;
Secs. 17 to 21, inclusive;
Secs. 27 to 32, inclusive;
Sec. 33, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 34, N $\frac{1}{2}$.

T. 50 N., R. 18 W.,

Secs. 1 to 36, inclusive.

T. 50 N., R. 19 W.,

Secs. 1 to 18, inclusive;
Secs. 21 to 29, inclusive;
Secs. 31 to 36, inclusive.

T. 50 N., R. 20 W.,

Sec. 1;
Sec. 2;
Secs. 11 to 14, inclusive;
Secs. 35 and 36.

T. 51 N., R. 18 W.,

Secs. 7 to 9, inclusive;
Secs. 16 to 22, inclusive;
Secs. 27 to 34, inclusive.

T. 51 N., R. 19 W.,
Secs. 7 to 36, inclusive.
T. 51 N., R. 20 W.,
Secs. 11 to 14, inclusive;
Secs. 23 to 26, inclusive;
Secs. 35 and 36.

The areas described above aggregate approximately 167,678 acres of public land.

5. As provided in paragraph 2(c) above, the following lands are further segregated from appropriation under the mining laws and the Materials Act, as amended, but not from the mineral leasing laws.

SIXTH PRINCIPAL MERIDIAN, COLORADO
MESA COUNTY

T. 15 S., R. 103 W.,
Sec. 21, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO
MONTROSE COUNTY

T. 49 N., R. 18 W.,
Sec. 28, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 33, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The above areas aggregate approximately 45 acres of public land. The total aggregates approximately 167,783 acres of public land.

5. For a period of sixty (60) days from the day of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the Grand Junction District Manager, Bureau of Land Management, Federal Building, Fourth and Rood, Grand Junction, Colo.

6. A public hearing on this proposed classification will be held at 8 p.m., on June 13, 1968, in Room 206A, Courthouse Annex, Grand Junction, Colo.

E. I. ROWLAND,
State Director.

[F.R. Doc. 68-5928; Filed, May 17, 1968;
8:45 a.m.]

NEW MEXICO

Notice of Filing of Plat of Survey

MAY 13, 1968.

1. Plat of survey of the land described below was officially filed in the land office, Santa Fe, N. Mex., effective at 10:30 a.m. on May 7, 1968:

PRINCIPAL MERIDIAN, NEW MEXICO

T. 26 N., R. 1 W.,
Sec. 36.

The area described contains 640 acres.

2. Except for and subject to valid existing rights, it is presumed that title to the E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ passed to the State of New Mexico upon the acceptance of the above-mentioned plat of survey, i.e., March 20, 1968. The remaining lands are within the Santa Fe National Forest.

MICHAEL T. SLOAN,
Chief, Division of Lands and
Minerals, Program Manage-
ment and Land Office.

[F.R. Doc. 68-5930; Filed, May 17, 1968;
8:45 a.m.]

[Grazing Districts 8, 9]

UTAH

Modification of Certain Grazing Districts

Under and pursuant to the authority vested in the Secretary of the Interior by the act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, et seq.), as amended, known as the Taylor Grazing Act, and in accordance with the authority delegated in 235 DM 1.1, it is ordered as follows:

The following described lands are hereby excluded from Utah Grazing District No. 9 and included in and made a part of Utah Grazing District No. 8:

SALT LAKE MERIDIAN

T. 15 S., R. 25 E.,
Sec. 9, lots 2, 3, 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$;
Sec. 10, lots 3, 7, 8, 9, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$
SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 13, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;
Sec. 14, lots 1, 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, S $\frac{1}{2}$;
Secs. 15 and 16;
Sec. 17, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 20, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Secs. 21, 22, and 23;
Sec. 24, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$
SW $\frac{1}{4}$;
Sec. 25, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 26, N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;
Secs. 27, 28, and 29;
Sec. 30, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 31, E $\frac{1}{2}$;
Secs. 32 and 33;
Sec. 34, N $\frac{1}{2}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 15 $\frac{1}{2}$ S., R. 25 E.,
Sec. 33, lots 1, 2, SE $\frac{1}{4}$;
Sec. 34;
Sec. 35, lots 1, 2, 3, 4, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$,
SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 36, lots 3, 4, N $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 16 S., R. 25 E.,
Sec. 3, lot 4;
Sec. 4, lots 1, 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 15 S., R. 26 E.,
Sec. 19, lot 2.

JOHN O. CROW,
Associate Director.

MAY 10, 1968.

[F.R. Doc. 68-5929; Filed, May 17, 1968;
8:45 a.m.]

Office of the Secretary

RALPH F. BOVIER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) Change title from Vice President to President, Pennsylvania Electric Co., Johnstown, Pa.
- (2) Add U.S. Realty Co.
- (3) No change.
- (4) No change.

This statement is made as of May 3, 1968.

Dated: May 3, 1968.

RALPH F. BOVIER.

[F.R. Doc. 68-5932; Filed, May 17, 1968;
8:46 a.m.]

MARK V. BURLINGAME

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) Disposed of interest in Montgomery Ward & Co.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of April 30, 1968.

Dated: May 3, 1968.

MARK V. BURLINGAME.

[F.R. Doc. 68-5939; Filed, May 17, 1968;
8:46 a.m.]

WILLIAM ANGUS DAVIS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of May 2, 1968.

Dated: May 2, 1968.

WILLIAM ANGUS DAVIS.

[F.R. Doc. 68-5933; Filed, May 17, 1968;
8:46 a.m.]

FRANKLIN STUART FEHR

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of May 2, 1968.

Dated: May 2, 1968.

F. STUART FEHR.

[F.R. Doc. 68-5934; Filed, May 17, 1968;
8:46 a.m.]

DONALD B. GREGG**Statement of Changes in Financial Interests**

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of April 14, 1968.

Dated: May 6, 1968.

DONALD B. GREGG.

[F.R. Doc. 68-5935; Filed, May 17, 1968; 8:46 a.m.]

WILLIAM C. PORTER, JR.**Statement of Changes in Financial Interests**

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of May 1, 1968.

Dated: May 2, 1968.

WILLIAM C. PORTER, JR.

[F.R. Doc. 68-5936; Filed, May 17, 1968; 8:46 a.m.]

WILLIAM R. REMALIA**Statement of Changes in Financial Interests**

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of April 15, 1968.

Dated: April 26, 1968.

WILLIAM R. REMALIA.

[F.R. Doc. 68-5940; Filed, May 17, 1968; 8:46 a.m.]

GEORGE LESTER WILKINS**Statement of Changes in Financial Interests**

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) Additions: Some mining. Deletions: None.
- (3) No change.
- (4) No change.

This statement is made as of May 6, 1968.

Dated: May 6, 1968.

GEO. L. WILKINS.

[F.R. Doc. 68-5937; Filed, May 17, 1968; 8:46 a.m.]

SETH N. WITTS**Statement of Changes in Financial Interests**

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of May 7, 1968.

Dated: May 7, 1968.

SETH N. WITTS.

[F.R. Doc. 68-5938; Filed, May 17, 1968; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation
DIRECTOR, PROCUREMENT AND
SALES DIVISION****Delegation of Authority Regarding
Purchase of Farina**

Pursuant to the authority vested in me by the Bylaws of Commodity Credit Corporation, I hereby authorize the Director, or in his absence, the Acting Director, Procurement and Sales Division, ASCS, or to the extent designated by the Director, Contracting Officers within such Division, as my designees, to carry out my responsibilities under "Purchase of Farina under Public Law 88-550, JCP

274" approved by the Secretary of Agriculture on May 8, 1968.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

MAY 10, 1968.

[F.R. Doc. 68-5968; Filed, May 17, 1968; 8:49 a.m.]

**Consumer and Marketing Service
GRAIN STANDARDS****Oklahoma Inspection Point**

Statement of considerations. At present, licensed grain inspectors are authorized to post their licenses to inspect and grade grain under the U.S. Grain Standards Act at the following established inspection points in Oklahoma:

Alva, Woods County, Okla.
Enid, Garfield County, Okla.

A request has been received from Robert H. Jordan, Perkins, Okla., asking that one or more persons be authorized to post their licenses to inspect and grade grain under the Act at Oklahoma City, Oklahoma County, Okla.

The request for approval to establish an inspection point in Oklahoma City does not preclude other interested individuals or organizations from submitting a similar request. If the request is granted, Oklahoma City, Okla., would be considered an "established inspection point" as defined in § 26.2(t) of the regulations under the U.S. Grain Standards Act (7 CFR 26.2(t)); licensed grain inspectors located at this point would then have certain responsibilities to inspect and grade grain as provided in § 26.19 of the regulations (7 CFR 26.19); and persons who shipped grain to or from the point would then have certain responsibilities to have grain inspected and graded as provided in § 26.80 of the regulations (7 CFR 26.80).

The Department policy under the U.S. Grain Standards Act is to approve only one official grain inspection agency at one time for any one place. This policy helps promote and protect the orderly and efficient marketing of grain by promoting the uniform application of the grain standards, reducing undesirable competition between inspection agencies, and reducing unnecessary duplicate inspections. The policy has been supported by the grain trade.

In order that the Department may determine whether Oklahoma City should be approved as an established inspection point, and which inspection agency should be approved as the official inspection agency at Oklahoma City, if it is approved as an established inspection point, interested parties are given opportunity to submit views and comments in writing, as follows:

Inspection agencies that wish to submit views and comments are requested to include the following information:

1. Whether they are a government, trade, or private organization, or are sponsored by a government, trade, or private organization. (If a trade organization or sponsored by a trade organization, the nature and function of the organization, a list of the member firms, the managerial and technical controls that the trade organization exercises over the inspection activities, and the operating procedure for exercising the controls; e.g., managed by a grain committee that employs and directs the inspection personnel.)

2. Whether they are now providing grain inspection services at established inspection points and, if so, where.

3. Whether they can provide State-wide grain inspection services at places where such services are desired and needed by the trade, but are not now available.

4. The name of the place in Oklahoma which they recommend for approval as an established inspection point for their own agency, but which is not now approved.

5. The number of licensed inspectors who would post their licenses at such point, and the names of the inspectors, if known.

6. The inspection equipment and facilities that they would have at such point.

7. Additional laboratory services, if any, such as protein testing, which they would provide at such point.

8. The schedules of inspection fees and charges that they propose to assess at such point, and a statement as to whether it may be necessary for the trade to agree to a minimum annual volume of business.

9. Whether their fees and charges would be reasonable and in accordance with the cost of the service rendered.

10. Whether they would be willing to keep separate and complete accounts of all receipts for inspection service and all disbursements from such receipts for purpose of audit by this Department.

11. Whether they would be willing to retain file samples of inspected grain for a minimum period of time as prescribed by the Department.

12. The regular hours of business when service would be available and whether they would be able to provide "24 hour per day" service if requested by the trade.

13. The expected annual volume of carlot, trucklot, and other inspections which they estimate would be handled at such point.

14. The names and addresses of the firms located at or near the proposed point which are believed to desire compulsory inspection of grain sold by grade and shipped or delivered for shipment in interstate or foreign commerce from or to the proposed inspection point.

Members of the grain trade who wish to submit views and comments are requested to include the following information:

1. Whether they recommend that Oklahoma City be approved as an established inspection point.

2. The name of the inspection agency, if any, which they recommend for approval at Oklahoma City.

3. The expected annual volume of carlot, trucklot, and other inspections which they would request at Oklahoma City.

Opportunity is hereby afforded interested parties to submit written data, views, or arguments with respect to the request to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions should be in duplicate and should be mailed to the Hearing Clerk not later than 20 days after this notice is published in the FEDERAL REGISTER. All submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). Consideration will be given to the written data, views, or arguments received by the Hearing Clerk and to other information available to the U.S. Department of Agriculture before final determination is made with respect to the requests.

Done in Washington, D.C., this 15th day of May 1968.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 68-5969; Filed, May 17, 1968;
8:49 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File No. 23 (68)-2]

S.E.D.I.C. AND G. A. FORREST

Order Denying Export Privileges for Indefinite Period

In the matter of S.E.D.I.C. (Societe Eurafricaine pour le Developpement de l'Industrie et du Commerce) and G. A. Forrest, 396 Avenue Louise, Brussels, Belgium, Respondents; File No. 23 (68)-2.

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, U.S. Department of Commerce, has applied for an order denying to the above-named respondents all export privileges for an indefinite period because the said respondents failed to furnish answers to interrogatories and failed to furnish certain records and other writings specifically requested, without good cause being shown. This application was made pursuant to § 382.15 of the Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations).

In accordance with the usual practice, the application was reviewed by the Compliance Commissioner, Bureau of International Commerce, who after consideration of the evidence has recommended that the application be granted. The report of the Compliance Commissioner and the evidence in support of the application have been considered.

The evidence presented shows that the respondent Societe Eurafricaine pour le Developpement de l'Industrie et du Commerce, also known as S.E.D.I.C., is a limited liability company (S.P.R.L.) with a place of business in Brussels, Belgium; the respondent G. A. Forrest is a partner in the firm and he is also its manager; the company is engaged in importing and exporting and otherwise trading in commodities, including heavy machinery and equipment used in agriculture.

The said Investigations Division is conducting an investigation relating to the participation of respondents and others in the ordering, receiving, financing and disposing of U.S.-origin heavy equipment, accessories and spare parts. On the evidence presented there is reason to believe that the said heavy equipment was reexported from a European port to an unauthorized destination.

It is impracticable to subpoena the respondents, and relevant and material written interrogatories and requests to furnish certain specific documents relating to the matters under investigation were served on them pursuant to section 382.15 of the Export Regulations. The respondents have failed to furnish answers to the interrogatories and have failed to furnish the documents requested, all as required by said section. They have not shown good cause for such failure. I find that an order denying export privileges to said respondents for an indefinite period is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Control Act of 1949, as amended. Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which respondents appear or participate in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondents, their representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly in any manner or capacity: (a) As a party or as a representative of a party to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part exported or to be exported from the United States; and (e)

in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any person, firm, corporation, or business organization with which they now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. This order shall remain in effect until the respondents provide responsive answers, written information, and documents in response to the interrogatories heretofore served upon them or give adequate reasons for failure to do so, except insofar as this order may be amended or modified hereafter in accordance with the Export Regulations.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of International Commerce, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondents or any related party, or whereby the respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for any such respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. A copy of this order shall be served on respondents.

VII. In accordance with the provisions of § 382.15 of the Export Regulations, the respondents may move at any time to vacate or modify this Indefinite Denial Order by filing with the Compliance Commissioner, Bureau of International Commerce, U.S. Department of Commerce, Washington, D.C. 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which, if requested shall be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

Dated: May 14, 1968.

This order shall become effective on May 16, 1968.

RAUER H. MEYER,

Director, Office of Export Control.

[F.R. Doc. 68-5952; Filed, May 17, 1968; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-16]

POWER REACTOR DEVELOPMENT CO.

Notice of Issuance of Order Extending Expiration Date of Provisional Operating License

The Atomic Energy Commission has issued an Order extending to December 31, 1968, the expiration date specified in Provisional Operating License No. DPR-9 issued to Power Reactor Development Co., Detroit, Mich., authorizing operation of the Enrico Fermi Atomic Power Plant located in Monroe County, Mich.

Copies of the Commission's order and the application dated February 19, 1968, filed by Power Reactor Development Co. are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 8th day of May 1968.

For the Atomic Energy Commission.

PETER A. MORRIS,

Director,

Division of Reactor Licensing.

[F.R. Doc. 68-5921; Filed, May 17, 1968; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 19580; Order E-26797]

FRONTIER AIRLINES, INC.

Order Regarding Amendment of Certificate of Public Convenience and Necessity

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of May 1968.

Application of Frontier Airlines, Inc., for amendment of its certificate of public convenience and necessity pursuant to Subpart M of the Board's rules of practice.

On February 12, 1968, Frontier Airlines, Inc., filed an application pursuant to Subpart M of the rules of practice for removal or modification of condition 6(a) of its certificate for route 73 so as to permit nonstop service between Denver, Colo., and Phoenix, Ariz.¹ The city and county of Denver and the Denver Chamber of Commerce filed a supporting answer. Western Air Lines filed an answer asking that the application be dismissed, to which Frontier filed a reply.²

¹ The Board did not take action to summarily dismiss the application within the 10-day period set forth in § 302.1305(a) and consequently the provisions of Subpart M became automatically applicable.

² Western has filed a motion to consolidate this proceeding, together with two of its own applications, Dockets 19495 and 19763, into the Bonanza Air Lines Subpart

Upon consideration of the foregoing pleadings and all the relevant facts, the Board has determined that there is a sufficient basis for setting Frontier's application for hearing.

Accordingly, It is ordered, That:

The application of Frontier Airlines, Inc., in Docket 19580, be and it hereby is set down for hearing before an examiner of the Board at a time and place hereafter designated.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-5962; Filed, May 17, 1968; 8:48 a.m.]

[Docket No. 19873]

LUFTHANSA GERMAN AIRLINES

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on May 23, 1968, at 10 a.m., e.d.s.t., in Room 211, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., May 14, 1968.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 68-5963; Filed, May 17, 1968; 8:48 a.m.]

[Docket No. 19762]

NOVO INDUSTRIAL CORP.

Notice of Proposed Approval

Application of Novo Industrial Corp. for approval of control relationships pursuant to section 408 of the Federal Aviation Act of 1958, as amended, Docket 19762.

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the undersigned intends to issue the order set forth below under delegated authority. Interested persons are hereby afforded a period of 15 days from the date of service within which to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., May 14, 1968.

[SEAL] A. M. ANDREWS,
Director,
Bureau of Operating Rights.

M proceeding, Docket 19616, for Phoenix-Los Angeles nonstop authority. In response to a motion by Frontier to strike this motion as untimely filed, Western insists that it is not seeking to consolidate these other dockets into this proceeding. We will accordingly deal with Western's motion in a subsequent order devoted to the Bonanza proceeding.

ORDER APPROVING CONTROL RELATIONSHIPS

Issued under delegated authority.

Application of Novo Industrial Corp. and Trans-World Forwarding and Air Expediting Co. for approval of control relationships pursuant to section 408 of the Federal Aviation Act of 1958, as amended; Docket 19762.

By joint application filed March 26, 1968, Novo Industrial Corp. (Novo) and Trans-World Forwarding and Air Expediting Co. (Air Expediting) request approval, without hearing, pursuant to section 408 of the Federal Aviation Act of 1958, as amended (the Act), of Novo's acquisition of all the outstanding stock of Air Expediting and the resultant common control by Novo of Air Expediting and Air Dispatch, Inc. (ADI).¹ In addition, the applicants request approval for Air Expediting to retain its operating authorization as an international air freight forwarder until December 31, 1969.

Novo is a diversified manufacturing and service corporation with divisions and subsidiaries in the United States and Canada. Air Expediting is a California corporation holding domestic and international air freight forwarding authorizations.

Pursuant to a purchase agreement and plan of reorganization, dated March 15, 1968,² and filed with the application, Novo will deliver to Messrs. Earl B. Jones (Jones) and Roger D. Kolda (Kolda), president and vice president-secretary, respectively, of Air Expediting, the number of shares of Novo stock that will be equivalent to \$325,000 in exchange for all the issued and outstanding shares of Air Expediting stock. The authorized capital stock of Air Expediting consists of 7,500 shares, 1,000 of which shall, on the date of closing, be outstanding. In addition to the foregoing, Novo has agreed to issue to Jones and Kolda, in the ratio of 71 percent and 29 percent respectively, additional shares of Novo's common stock to the extent of 25 percent of Air Expediting's net operating revenues, as described in the agreement in excess of \$320,000 in each calendar year 1968 through and including 1972.³

The application recites that one of the principal purposes of the acquisition of Air Expediting is to enable ADI to obtain the benefit of Air Expediting's experience and identity in international air freight forwarding; which identity the applicants allege ADI does not presently possess. For this reason the applicants request the Board to permit Air Expediting to retain its international operating authorization until December 31, 1969. Applicants indicate their willingness to turn in Air Expediting's domestic authority for cancellation upon approval of the subject transaction. Subsequent to December 31, 1969, the international air freight forwarding operations of Air Expediting

would cease and the nonair freight forwarding activities of Air Expediting would be handled either by ADI, after merger of Air Expediting into ADI or the liquidation of Air Expediting, or by Air Expediting as a division of ADI.⁴

Although the purchase agreement and plan of reorganization indicates that Novo will be purchasing the stock of Air Expediting, the instant application and individual employment agreements between ADI, Jones and Kolda indicate that Air Expediting will become a wholly owned subsidiary of ADI. The application itself does not elaborate on the formal procedure to be followed to effect the aforementioned corporate alignment. We have been advised that Novo will acquire Air Expediting's stock generally on behalf of ADI, and that such stock will either be transferred to ADI or held for ADI's account by Novo.

The applicants state that they are cognizant of the Board's opposition to indefinite control of two companies authorized to engage in international air freight forwarding. However, they cite the Board's decision in the Airborne Freight Corporation—Pan-Maritime Cargo Service, Inc., Acquisition Case as being applicable in the instant case.⁵

⁴ Air Expediting also has a license to engage in ocean freight forwarding. Novo has asked the Federal Maritime Commission that such authority be retained by Air Expediting.

⁵ By Order E-12477, May 8, 1958, Docket 8894, the Board granted Airborne an exemption from section 408 of the Act to the extent that such section would prevent Airborne,

The application recites that as a result of the acquisition in question, Air Expediting's shippers would benefit from ADI's broad domestic coverage and ADI's shippers would benefit from Air Expediting's broad international coverage. Moreover, it is alleged that economies would result for both the shipping public and the forwarders through the elimination of duplicate facilities in San Francisco. Finally, it is contended that the acquisition will strengthen both ADI and Air Expediting without adversely affecting other air freight forwarders.

In addition to the requests contained therein, the application lists the names of several individuals who would apparently be involved in interlocking relationships within the meaning of section 409 of the Act should the Board grant approval of the instant requests.⁶ The interlocking relationships in question are as follows:

a domestic and international air freight forwarder, from acquiring control of Pan-Maritime, an international air freight forwarder. The term of the exemption was 2 years, during which Pan-Maritime was allowed to retain, subject to certain conditions, its letter of registration as an international air freight forwarder.

⁶ The application notes that to the extent that the directorships involve interlocking relationships with an indirect air carrier, a company controlling and a company under common control with same, such interlocking relationships are apparently exempt from section 409 of the Act pursuant to § 287.2(f) of the Board's economic regulations.

Name	Novo	ADI	Air expediting
Earl B. Jones.....		Vice President.....	President, Director.
Roger D. Kolda.....		Assistant Secretary.....	Vice President, Secretary, Director.
Chester M. Ross.....	Director, Vice President.....	Chairman.....	Director.
Richard E. Garley.....	Vice President, Secretary, General Counsel.	Vice President, Secretary, General Counsel.	Director.
David A. Highman.....	Vice President.....	President, Director.....	Director.

No comments relative to the application or requests for a hearing have been received.

Notice of intent to dispose of the application without a hearing has been published in the FEDERAL REGISTER, and a copy of such notice has been furnished by the Board to the Attorney General not later than 1 day following such publication, both in accordance with the requirements of section 408(b) of the Act.

Upon consideration of the foregoing, it is concluded that Novo is a person controlling an air carrier (ADI) within the meaning of section 408 of the Act, and it is found that the acquisition of control of Air Expediting and the common control of Air Expediting and ADI by Novo are subject to that section. However, it is further concluded that such control relationships do not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, do not result in creating a monopoly and do not tend to restrain competition. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, and it is concluded that the public interest does not require a hearing.

The acquisition may assist ADI in establishing itself as an effective competitor in international air freight forwarding and result in the development of additional air cargo. Moreover, the control relationships are similar to others which have been approved by the Board and essentially do not present any new substantive issues.

Under normal circumstances the Board is opposed to the holding by one person of two forwarder authorizations of like scope. How-

ever, to require cancellation at this time of Air Expediting's international authority would tend to defeat the purpose of the instant acquisition. Consequently, we shall permit Air Expediting's international authority to remain effective until December 31, 1969, subject to various conditions. In this way ADI will be afforded sufficient time to establish itself as an international air freight forwarder and integrate Air Expediting's operations into its own. At the same time the attached conditions should prevent from occurring the regulatory difficulties the Board's policy against dual authorizations is designed to guard against.

In view of the foregoing it appears that approval of the control relationships, subject to the conditions hereinafter set forth, would not be inconsistent with the public interest.

We also find that interlocking relationships within the scope of section 409(a) of the Act will result from the transactions described herein. However, upon approval of the acquisition, such relationships apparently would come within the scope of the exemption from section 409 afforded by § 287.2 of the Board's economic regulations.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.13, it is found that the foregoing control relationships should be approved, subject to conditions, under section 408(b) of the Act, without hearing.

Accordingly, it is ordered:

1. That the acquisition of control of Air Expediting by Novo while Novo controls ADI and Fleet be and it hereby is approved;

¹ By Order E-24429, Nov. 21, 1966, Docket 17708, the Board approved the acquisition of control of ADI, a domestic air freight forwarder, by Novo and the resultant common control by Novo of ADI and the Fleet Carrier Corp. (Fleet), an interstate common carrier by truck. On Jan. 5, 1968, ADI was granted international air freight forwarder authority.

² Consummation of the agreements is specifically conditioned upon prior Board approval thereof and must take place within 90 days of its execution.

³ Upon approval of the agreement, Jones and Kolda will execute employment agreements with ADI; Jones will serve as Vice President (San Francisco) of ADI and President of Air Expediting, and Kolda will serve as Assistant Secretary of ADI and Vice President of Air Expediting. Both such agreements will run through Dec. 31, 1972.

2. That the approval granted herein shall terminate on December 31, 1969, unless by that date Air Expediting submits for cancellation its international air freight forwarder operating authorization;

3. That during the period of effectiveness of Air Expediting's international air freight forwarder operating authorization, ADI and Air Expediting shall not publish different rates (a) for air transportation between points which both companies offer service; and (b) for pickup and delivery services at any point served by both companies; that neither ADI nor Air Expediting shall receive from any air carrier or foreign air carrier any commission on shipments consolidated by either ADI or Air Expediting as international air freight forwarders and shipped in air transportation by it as consignor or consignee; that each company shall maintain separate accounts and records; and that any required reports filed with the Board shall be submitted individually and shall not reflect any consolidation of financial or statistical data; and

4. That Air Expediting shall submit for cancellation its domestic air freight forwarder operating authorization within 10 days of the effective date of this order.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 5 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

[SEAL]

HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-5964; Filed, May 17, 1968;
8:48 a.m.]

DELAWARE RIVER BASIN COMMISSION

COMPREHENSIVE PLAN

Notice of Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 22, 1968. The hearing will take place in Room 603, City Hall Annex, Juniper and Filbert Streets, Philadelphia, beginning at 2 p.m. The subject of the hearing will be proposals to amend the Comprehensive Plan so as to include therein the following projects:

1. *Borough of Ambler.* A project for the expansion of the existing South Sewage Treatment Works in the Borough of Ambler, Montgomery County, Pa. Capacity of the plant would be increased from 1.63 to 3.26 million gallons daily and treated effluent will discharge to Wissahickon Creek.

2. *New Castle County.* Construction of a sanitary interceptor sewer along Shellpot Creek between Philadelphia Pike and Shipley Road in New Castle County, Del. The project will extend about 23,000 feet along the creek and is designed to relieve overloading from an existing

sewer. The sewer will discharge into the Wilmington Sewage Treatment Plant.

3. *North Wales Water Authority.* A well water supply project to augment public water supplies in Montgomery County, Pa. Designated as Well No. 16, the new facility is expected to yield approximately 1,000 gallons per minute.

4. *Artesian Water Co.* A well water supply project to augment public water supplies in the county's service area in New Castle County, Del. Designated as Well No. 2, the new facility is expected to yield approximately 1,000 gallons per minute.

5. *Town of Middletown.* The construction of sewers and a sewage treatment plant to serve the town of Middletown, New Castle County, Del. The proposed facilities will provide secondary treatment for a population equivalent of 4,000 people. Treated effluent will discharge into Church Branch, a tributary of Appoquinimink River.

6. *Borough of Richland.* A well water supply project to augment public water supplies in the Borough of Richland, Lebanon County, Pa. Designated as Well No. 4, the new facility is expected to yield approximately 80 gallons per minute.

7. *City of Port Jervis.* A 50-acre sanitary land fill project for the disposal of refuse at a site 1,500 feet northeast of the city of Port Jervis, Orange County, N.Y. To be located adjacent to Gold Creek, the land fill project will be operated on the disposal-trench method.

Documents relating to the above-proposed additions to the Comprehensive Plan may be examined at the Commission's offices. All persons wishing to testify are requested to register in advance with the Secretary to the Commission; Telephone (609) 883-9500.

W. B. WHITALL,
Secretary.

MAY 10, 1968.

[F.R. Doc. 68-5961; Filed, May 17, 1968;
8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 18183, 18184; FCC 68-521]

H-B-K ENTERPRISES AND BROADCASTING, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of John P. Hilmes, Geoffrey B. Knutson, and Tom E. Beal, doing business as H-B-K Enterprises, Grandview, Mo., Docket No. 18183, File No. BP-13823; Requests: 1190 kc, 250 w, DA-1, U, Class II; Broadcasting, Inc., Kansas City, Mo., Docket No. 18184, File No. BP-14486; Requests: 1190 kc, 250 w, 1 kw-LS, DA-N, U, Class II; for construction permits.

1. The Commission has before it the above-captioned mutually exclusive applications and a pleading in the nature of a petition to deny directed against

Broadcasting, Inc., by Westinghouse Broadcasting Co., Inc., licensee of Station WOWO, Fort Wayne, Ind.

2. Grandview, Mo., is a part of the Kansas City, Mo., urbanized area and is, in fact, virtually surrounded by the southern end of Kansas City proper by virtue of recent annexations. The proposed 5.0 mv/m contour of H-B-K Enterprises (H-B-K), the Grandview applicant, penetrates the geographic boundary of Kansas City. Inasmuch as the population of Kansas City, Mo. (475,539), is over 50,000 and more than twice the population of Grandview (10,116),¹ a presumption arises that this applicant realistically proposes to serve Kansas City rather than Grandview.²

3. In attempting to rebut the aforementioned presumption, the applicant, on August 8, 1966, filed an amendment pointing out that Grandview, with a present estimated population of 15,000, is a separate and independent municipality with its own city government (mayor, city administrator and alderman), its own fire and police departments, school system, library, churches, bank, recreational facilities, industries, and businesses. H-B-K states that Grandview has a weekly newspaper with a circulation of approximately 6,300, as well as a weekly shopping paper, but that there is a pressing need for a radio station. Referring to a survey consisting of over 130 interviews with community leaders in various fields, H-B-K alleges that its programming is designed to meet the needs and interests of both the city of Grandview and the adjacent Air Force Base, and that it will also attempt to provide broadcast coverage to the nearby towns of Belton, Raytown, and Ruskin Heights.

4. H-B-K states that it also conducted a survey of potential advertising revenue available in Grandview, and that it has concluded, based on personal contact with over 100 businessmen engaged in over 40 businesses in Grandview, that there is sufficient advertising revenue from Grandview to adequately support its proposed operation, and that the 53 businesses in Truman Corners Shopping Center alone had a retail volume of sales in excess of 15 million dollars in 1965.

5. Pointing out that it proposes the minimum power of 250 watts, the applicant states that had it sought Kansas City coverage it would have applied for greater power. H-B-K contends further that it would be impossible to provide a local service to Grandview without penetrating Kansas City. The applicant, in its engineering statement, alleges that the location of the proposed transmitter site east of Grandview was dictated by protection of existing stations and air safety requirements and the need to provide adequate coverage of Grandview under

¹ Although these population figures are both based on the 1960 U.S. Census, the Grandview figure includes population areas which have been annexed to Grandview since the 1960 Census.

² Policy statement on section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities, 2 FCC 2d 190, 6 RR 2d 1901.

³ ADI has revised its tariffs so that it no longer offers service to the same international points as does Air Expediting.

the rules. Policy statement on section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities, FCC 66-229, 6 RR 2d at 1910.²

6. After careful examination of the above showing, the Commission finds that H-B-K has failed to overcome the aforementioned presumption. Therefore, a suburban community issue will be included as to that applicant.

7. On February 14, 1966, Westinghouse Broadcasting Co., Inc., filed an "Objection to Grant" asserting that the Broadcasting, Inc., proposal would result in objectionable nighttime interference to WOWO if current amplitudes of certain of the proposed towers vary by less than the 5 percent permitted by § 73.57 of the Commission's rules. Westinghouse also alleged that Broadcasting, Inc., made no showing as to the means proposed for maintaining antenna parameters within limits sufficient to avoid interference to the protected WOWO contours. On the basis of Broadcasting's application, including an amendment filed July 24, 1967, to reduce nighttime power and change radiation pattern, the Commission finds that this applicant's proposed operation will not cause interference to Station WOWO. Accordingly, the petition will be denied.

8. Examination of Broadcasting, Inc.'s application indicates that the proposal fails to provide the nighttime city coverage required by § 73.188 of the rules since the 5 mv/m contour does not cover the entire city. Accordingly, an appropriate city coverage issue will be specified.

9. Based on the information before the Commission, it appears that except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding, on the issues set forth below.

10. Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposals and the availability of other primary service to such areas and populations.

2. To determine whether the proposed nighttime 5 mv/m contour of Broadcasting, Inc., would provide coverage of the city sought to be served, as required by § 73.188 of the Commission's rules, and, if not, whether circumstances exist which would warrant a waiver of said section.

² H-B-K indicates that locating south of Grandview was impractical because of Richards-Gebaur AFB; to the west was inconsistent with coverage requirements of the rules with respect to Grandview and protection of Station WOWO, Fort Wayne, Ind.; and to the north was inconsistent with service to Grandview and its trade area to the south.

3. To determine whether the proposal of H-B-K Enterprises will realistically provide a local transmission facility for its specified station location or for another larger community, in light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programming needs;

(b) The extent to which the needs of the specified station location are being met by existing standard broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programming needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

4. To determine, in the event that it is concluded pursuant to the foregoing issue (a) that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service, namely, Kansas City, Mo.

5. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

6. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the operations proposed in the above-captioned applications would better serve the public interest.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

11. It is further ordered, That, in the event of a grant of either application, the construction permit should contain the following condition: Any presunrise operation must conform with §§ 73.87 and 73.99 of the rules, as amended June 28, 1967 (32 F.R. 10437), supplementary proceedings (if any) involving Docket No. 14419, and/or the final resolution of matters at issue in Docket No. 17562.

12. It is further ordered, That the petition by Westinghouse Broadcasting Co., Inc., is denied.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

14. It is further ordered, That the applicants herein shall, pursuant to § 1.594 of the Commission's rules and section 311(a) (2) of the Communications Act of 1934, as amended, give notice of the hearing either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: May 8, 1968.

Released: May 15, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,⁴

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-5965; Filed, May 17, 1968;
8:49 a.m.]

[Docket Nos. 18181, 18182; FCC 68-509]

VERMONT NEW YORK BROADCASTERS, INC., AND VERMONT RADIO, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Vermont New York Broadcasters, Inc., Burlington, Vt., Docket No. 18181, File No. BPH-6122; Requests: 92.9 mcs, No. 225; 36 kw; 2706 feet; Vermont Radio, Inc., Burlington, Vt., Docket No. 18182, File No. BPH-6201; Requests: 92.9 mcs, No. 225; 35 kw; 2721 feet; for construction permits.

1. The Commission has under consideration the above captioned and described applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. Vermont Radio proposes to duplicate AM programming approximately 26.78 percent of the time while Vermont New York Broadcasters proposes independent operation. Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted under the standard comparative issue will be limited to evidence concerning the benefits to be derived from the proposed duplication, and a full comparison of the applicants' program proposals will not be permitted in the absence of a specific programming inquiry—Jones T. Sudbury, 8 FCC 2d 360, FCC 67-614, (1967).

3. Vermont New York Broadcasters has requested waiver of § 73.210(a) (2) of the Commission's rules to permit the main studio to be located outside the city limits of Burlington, Vt., at a point other than the transmitter site. The proposed main studio location, only a short distance from the Burlington city limits, is already used by its TV station. Under these circumstances, we believe that adequate justification has been provided for waiver

⁴ Commissioners Loevinger and Wadsworth absent.

if the Vermont New York application is granted.

4. Vermont Radio has requested waiver of § 73.210(a)(2) of the Commission's rules to permit the main studio to be located outside the city limits of Burlington, Vt., at a point other than the transmitter site. The proposed main studio location, near the Burlington city limits, is already being used for Vermont Radio's companion AM station. Under these circumstances, we believe that adequate justification has been provided for waiver if the Vermont Radio application is granted.

5. Except as indicated below, the applicants are qualified to construct and operate as proposed. However, because of their mutual exclusivity, the Commission is unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity, and is of the opinion that the applications must be designated for hearing on the issues set forth below.

6. It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine which of the proposals would better serve the public interest.

2. To determine in the light of the evidence adduced pursuant to the foregoing issue, which of the applications for construction permit should be granted.

7. It is further ordered, That if the Vermont New York Broadcasters' application is granted, the permit shall contain the following condition: Section 73.210(a)(2) of the Commission's rules is waived to permit the establishment of the main studio outside the city limits of Burlington, Vt., at 1500-1502 Hege-man Avenue, Fort Ethan Allen, Vt.

8. It is further ordered, That if the Vermont Radio application is granted, the permit shall contain the following condition: Section 73.210(a)(2) of the Commission's rules is waived to permit the establishment of the main studio outside the city limits of Burlington, Vt., on Malletts Bay Avenue, 0.5 mile north of Pine Island, Colchester, Vt.

9. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

10. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or,

if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: May 8, 1968.

Released: May 15, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-5966; Filed, May 17, 1968;
8:49 a.m.]

TARIFF COMMISSION

CONSUMPTION OF BROOMS

Reports to President

MAY 15, 1968.

The above-identified notice, dated May 2, 1968, appeared in the FEDERAL REGISTER of May 8, 1968, on page 6945. The purpose of this notice is to correct the following error:

Second full paragraph, last line, change the figure "2,993,505" to "2,933,505."

By direction of the Commission.

[SEAL] DONN N. BENT,
Secretary.

[F.R. Doc. 68-5947; Filed, May 17, 1968;
8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 663]

TEXAS

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of May 1968, because of the effects of certain disasters, damage resulted to residences and business property located in the counties of Midland and San Patricio, in the State of Texas;

Whereas, the Small Business Administration has investigated and received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the offices

¹ Commissioner Loevinger absent.

below indicated from persons or firms whose property, situated in the aforesaid counties, and areas adjacent thereto, suffered damage or destruction resulting from floods occurring on or about May 7, 1968.

OFFICES

Small Business Administration Regional Office, 1616 19th Street, Lubbock, Tex. 79401.
Small Business Administration Regional Office, 301 Broadway, San Antonio, Tex. 78205.
Small Business Administration Disaster Branch Office, 317 Peoples Street, Corpus Christi, Tex. 78401.

2. A temporary office will be established in Midland County, Tex., address to be announced locally.

3. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to November 30, 1968.

Dated: May 10, 1968.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 68-5957; Filed, May 17, 1968;
8:48 a.m.]

INDUSTRIAL GROWTH CAPITAL CORPORATION OF INDIANAPOLIS, IND.

Notice of Filing of Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the Regulations Governing Small Business Investment Companies (13 CFR Part 107, 33 F.R. 326) for transfer of control of Industrial Growth Capital Corp., 529 Merchants Bank Building, Indianapolis, Ind. 46204 (IGCC), a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), License No. 07/07-0025.

IGCC was licensed on January 24, 1961, and as of March 31, 1968, had paid-in capital and paid-in surplus from private sources of \$850,000. It has 8500 shares of issued and outstanding common stock held by 30 stockholders.

American Fletcher National Bank and Merchants National Bank & Trust Co., both of Indianapolis, Ind., the two major shareholders own more than 50 percent of IGCC's stock. Mr. Samuel Arthur Rea and his associates, comprising the following named individuals, have agreed to purchase all of the shares of the two major shareholders and to submit a tender offer to the remaining stockholders, none of whom as much as 10 percent of the Licensee's stock. As a result of the transaction, which is contingent upon and subject to SBA approval, Mr. Rea and his associates will acquire control over IGCC. The following individuals include the proposed new officers and directors, as well as transferees who will own 10 percent or more of IGCC's stock:

<i>Name and Address</i>	<i>Proposed Relationship</i>
Samuel A. Rea, 3403 South Washington Road, Fort Wayne, Ind. 46804.	President, Director and Manager (More than 10 percent stockholder).
G. Irving Latz, II, 1919 Hadley Road, Fort Wayne, Ind. 46802.	Director.
James M. Barrett, III, Lincoln Tower, Fort Wayne, Ind. 46802.	Secretary and Director.
Eugene B. Bingham, 1302 South Calhoun, Fort Wayne, Ind. 46802.	Director (temporary).
John Bonsib, 927 South Harrison, Fort Wayne, Ind. 46802.	Treasurer and Director.
Harold A. Schrock, 510 Carter Road, Goshen, Ind. 46526.	Director and more than 10 percent stockholder.
Isabelle Chapman, 632 South Sixth Street, Goshen, Ind. 46526.	More than 10 percent stockholder.
Lola Rea Gits, 901 Country Club Drive, La Grange, Ill. 60525.	More than 10 percent stockholder.
Sally Rea Oberhelman, 3773 Erie Avenue, Cincinnati, Ohio 45208.	More than 10 percent stockholder.
Janet Rea Slater, Route No. 3, Stillmeadow, Newark, Ohio 43056.	More than 10 percent stockholder.
Samuel A. Rea, Trustee U/W of Victor F. Rea, deceased.	More than 10 percent stockholder.

The principal office of the Licensee presently will remain in Indianapolis, Ind.

Matters involved in SBA's consideration of the application include the general business reputation and character of the foregoing individuals and the probability of successful operation of the company under their control and management (including adequate profitability and financial soundness) in accordance with the Act and Regulations.

Notice is further given that any interested person may not later than 10 days from the publication of this notice, submit to SBA, in writing, relevant comments on the proposed transfer of control. Any such communication should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the proposed transferees in a newspaper of general circulation in Indianapolis and Fort Wayne, Ind.

For SBA (pursuant to delegated authority),

Dated: May 10, 1968.

GLENN R. BROWN,
Associate Administrator
for Investment.

[F.R. Doc. 68-5958; Filed, May 17, 1968; 8:48 a.m.]

WISCONSIN CAPITAL CORPORATION OF MILWAUKEE, WIS.

Notice of Filing of Application for Transfer of Control of Licensed Small Business Investment Com- pany

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the Regulations Governing Small Business Investment Companies (13 CFR Part 107, 33 F.R. 326) for transfer of control of Wisconsin Capital Corp., 840 North Third Street, Milwaukee, Wis. 53203 (WCC), a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), License No. 07/07-0012.

WCC was licensed on January 5, 1960, with paid-in capital and surplus from private sources of \$153,700. Its present paid-in capital and surplus from private sources is \$303,700. It has 10,759 shares of issued and outstanding stock held by five stockholders.

Mr. Ronald B. Sadoff, 1320 East Capital Drive, Milwaukee, Wis. 53211, is a director and an officer of WCC and present owner of more than 10 percent of WCC's outstanding stock. He has offered to sell his stock to Herbert O. Schoenherr, 840 North Third Street, Milwaukee, Wis. 53203. Mr. Schoenherr is an officer and director and present owner of more than 10 percent of WCC's outstanding stock. The offer is subject to and contingent upon the approval of SBA.

As a result of this transaction, Mr. Schoenherr will own 50 percent of the capital stock of WCC. The principal office will remain in Milwaukee.

Matters involved in SBA's consideration of the application include the general business reputation and character of Mr. Schoenherr and the probability of successful operation of the company under his control and management (including adequate profitability and financial soundness) in accordance with the Act and Regulations.

Notice is further given that any interested person may not later than 10 days from the publication of this notice submit to SBA, in writing, relevant comments on the proposed transfer of control. Any such communication should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published by the proposed transferee in a newspaper of general circulation in Milwaukee, Wis.

For SBA (pursuant to delegated authority),

Dated: May 10, 1968.

GLENN R. BROWN,
Associate Administrator
for Investment.

[F.R. Doc. 68-5959; Filed, May 17, 1968; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Section 5a Application 31; Amdt. 1]

CHICAGO SUBURBAN MOTOR CAR- RIERS ASSOCIATION, INC.

Notice of Petition for Approval of Amendment to Agreement

MAY 14, 1968.

The Commission is in receipt of a petition in the above-entitled proceeding for approval of an amendment to the agreement therein approved.

Filed May 6, 1968, by Waldo B. Jeffrey, Attorney-in-Fact, 1957 Ridge Road, Homewood, Ill. 60430.

The amendment involves: Changes in the Bylaws so as to (1) establish an additional membership class limited to tariff participation; (2) vest authority for termination of membership in the Board of Directors in lieu of the General Manager; (3) make actions of the Executive Committee subject to approval and ratification by the Board of Directors; (4) constitute the Chairman and Board of Directors as the Appeals Committee in lieu of an appointed committee; (5) revise the language of the agreement form to eliminate reference to a named individual as agent and attorney-in-fact; (6) provide for public notice of independent action to comply with Ex Parte 253; (7) add a new article XVIII relating to appointment of the Association as agent of the members respecting contracts with freight forwarders; and (8) make other incidental changes to effectuate the foregoing changes.

The petition is docketed and may be inspected at the office of the Commission in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the petition. Otherwise, the Commission, in its discretion, may proceed to investigate and determine the matters involved without public hearing.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5955; Filed, May 17, 1968; 8:48 a.m.]

[Notice 138]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 15, 1968.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered

proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-70266. By order of May 14, 1968, the Transfer Board approved the transfer to A-1 Transportation Co., a corporation, Odessa, Tex., of the operating rights in certificates Nos. MC-119897, MC-119897 (Sub-No. 2), MC-119897 (Sub-No. 3), and MC-119897 (Sub-No. 9) issued February 9, 1962, December 18, 1962, July 19, 1962, and January 30, 1967, respectively, to Great Western Motor Lines, Inc., Rosenberg, Tex., authorizing the transportation of mine and oil field machinery and supplies, except classes A and B explosives, between points in Missouri, Kansas, Oklahoma, and those in that part of Illinois within 150 miles of St. Louis, Mo.; machinery, materials, supplies, and equipment incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in Louisiana and Texas, and between Iowa Park, Tex., and points within 100 miles thereof, on the one hand, and, on the other, points in Oklahoma and those in Lea and Eddy Counties, N. Mex.; machinery, equipment, materials, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products and by-products, water, or sewerage, restricted to the transportation of shipments moving to or from pipeline rights-of-way, between points in Missouri, Kansas, Oklahoma, and points in that part of Illinois within 150 miles of St. Louis, Mo.; between points in Louisiana and Texas, and between Iowa Park, Tex., and points within 100 miles thereof, on the one hand, and, on the other, points in Oklahoma and those in Lea and Eddy Counties, N. Mex.; and corrosion-inhibiting compounds, emulsion-breaking compounds, paraffin solvents, scale-inhibiting compounds, water treating and softening compounds, and chemicals and compounds used in the processing of crude oil, liquid, in bulk, in tank vehicles (except petroleum and petroleum products), when moving as a material or supply to be used in the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and petroleum products and byproducts, between Wichita Falls, Tex., and points in Colorado, Montana, New Mexico, Utah, and Wyoming; between Ellinwood and Plainville, Kans., on the one hand, and, on the other, points in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming; between points in Illinois (except East St. Louis and points within 25 miles thereof), on the one hand, and, on the other, points in

Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming; and between Ruston, La., and points in Indiana and Kentucky. Rufus H. Lawson, Post Office Box 75124, Oklahoma City, Okla. 73107, and George Fowler, 520 North Lee Street, Odessa, Tex. 79760, attorneys for applicants.

No. MC-FC-70416. By order of May 14, 1968, the Transfer Board approved the transfer to Olean Limousine Service, Inc., Olean, N.Y., of the operating rights in permits Nos. MC-126289 and MC-126326 (Sub-No. 2), issued December 1, 1967, to Robert P. Ganoung, doing business as Olean Limousine Service, Olean, N.Y., authorizing the transportation, over irregular routes, of passengers, in special operations, limited to not more than five passengers in one vehicle, and baggage in the same vehicle with passengers, and packages not in excess of 400 pounds each, in passenger vehicles, between points in Cattaraugus and Allegany Counties, N.Y., and McKean and Potter Counties, Pa., on the one hand, and, on the other, points in Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia, with certain restrictions. Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, D.C. 20004, attorney for applicants.

No. MC-FC-70427. By order of May 14, 1968, the Transfer Board approved the transfer to Orleans Trucking Co., Inc., Orleans, Ind., of that portion of the operating rights in certificate No. MC-124803 issued March 25, 1968, to Traylor Grain Sales, Inc., Loogootee, Ind., authorizing the transportation of commercial feed, from the plant site of Ralston Purina Chow Co., in Louisville, Ky., to points in that part of Indiana on and south of U.S. Highway 40 extending from the Illinois-Indiana State line to Indianapolis, Ind., and on and south of U.S. Highway 52 extending from Indianapolis to the Indiana-Ohio State line; and commercial feed and commercial feed ingredients, from Vandalia, Ill., to points in Daviess, Du Bois, Gibson, Knox, Martin, Pike, Posey, and Vanderburgh Counties, Ind. John E. Lesow, 3737 North Meridian Street, Indianapolis, Ind. 46208, attorney for applicants.

No. MC-FC-70431. By order of May 14, 1968, the Transfer Board approved the transfer to Swan Messenger Service, Inc., East Brunswick, N.J., of the operating rights in certificate No. MC-124705 (Sub-No. 2) issued May 6, 1968, to Joseph Swan, doing business as Swan Messenger Service, East Brunswick, N.J., authorizing the transportation of documents, advertising material, books, machine and electrical parts, and inter-office correspondence, in packages not exceeding 250 pounds, in shipments not exceeding 5,000 pounds, between points in Middlesex and Somerset Counties, N.J., on the one hand, and, on the other, Philadelphia, Pa., Wilmington, Del., Baltimore, Md., and New York, N.Y., and points in Nassau, Suffolk, and Westchester Counties, N.Y., and Fairfield,

New Haven, and Hartford Counties, Conn., restricted to same day service; and, dentifrices and dental materials and supplies, in packages, in shipments not exceeding 7 pounds, between Philadelphia, Pa., on the one hand, and, on the other, points in Middlesex, Somerset, and Union Counties, N.J.; and, between points in Middlesex, Somerset, and Union Counties, N.J. William J. Augello, Jr., 2 West 45th Street, New York, N.Y. 10036, attorney for applicants.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-5956; Filed, May 17, 1968;
8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-7148 etc.]

GULF OIL CORP. ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates¹

MAY 9, 1968.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service heretofore authorized as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 3, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no protest or petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given: *Provided, however*, That pursuant to § 2.56, Part 2, Statement of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, as amended, all permanent certificates of public convenience and necessity granting applications, filed after July 1, 1967, without

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

further notice, will contain a condition precluding any filing of an increased rate at a price in excess of that designated for the particular area of production for the period prescribed therein unless at the time of filing of protests or petitions to intervene the Applicant indicates in writing that it is unwilling to accept such a condition. In the event Applicant is unwilling to accept such condition the application will be set for formal hearing.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Pres-sure base
G-7148 D 4-25-68	Gulf Oil Corp., Post Office Box 1589, Tulsa, Okla. 74102.	H. L. Hunt and Hunt Industries, Whelan Field, Harrison County, Tex.	Depleted	-----
G-8493 D 4-25-68	Sinclair Oil & Gas Co., Operator, Post Office Box 521, Tulsa, Okla. 74102 (partial abandonment).	Tennessee Gas Pipeline Co., a division of Tennessee, Inc., Village Mills and West Village Mills Fields, Harrison County, Tex.	Depleted	-----
G-11933 D 4-25-68	Mobile Oil Corp., Post Office Box 2444, Houston, Tex. 77001 (partial abandonment).	Trunkline Gas Co., Clear Creek Field, Beauregard Parish, La.	Depleted	-----
C161-691 D 4-24-68	Sinclair Oil & Gas Co. (Operator) et al.	Michigan Wisconsin Pipe Line Co., Woodward Area, Dewey County, Okla.	Assigned	-----
C161-691 D 4-24-68	do	do	Assigned	-----
C161-1251 D 4-29-68	Wheeler Oil Co. et al., Post Office Box 881, Corsicana, Tex. 75110.	Tennessee Gas Pipeline Co., a division of Tennessee, Inc., Le Reforma Field, Starr County, Tex.	Assigned	-----
C162-1522 C 5-2-68	Pan American Petroleum Corp., Post Office Box 591, Tulsa, Okla. 74102.	Northern Natural Gas Co., Mocane Gas Area, Beaver County, Okla.	17.0	14.65
C164-841 C 5-2-68	St. Clair Oil Co., 219 East Main St., St. Clairsville, Ohio 43080.	Equitable Gas Co., acreage in Lewis, Upshur, Harrison Counties, W. Va.	25.0	15.325
C168-237 C 4-23-68	Dier Wagner & Co. (Operator) et al., 909 Fort Worth National Bank Bldg., Fort Worth, Tex. 76102.	United Gas Pipe Line Co., Greta Field, Refugio County, Tex.	15.0	14.65
C168-978 C 4-5-68	Appalachian Exploration & Development, Inc., c/o Boyd Post Office Box 1473, Charleston, W. Va. 25325.	United Fuel Gas Co., Union District, Kanawha County, W. Va.	28.0	15.325
C168-1241 A 4-25-68	The California Oil Co., a Division of Chevron Oil Co., 1111 Tulane Ave., New Orleans, La. 70112.	Trunkline Gas Co., South Pelto Blocks 16 and 23; South Timberlaker Blocks 51, 52, 63, 189, 190, and 203; Ship Shoal Blocks 266 and 267; Offshore Southern Louisiana.	21.25	15.025
C168-1242 B 4-25-68	Starkey Farm Gas Co., c/o C. W. Richards, Esquire, Box 274, Cairo, W. Va.	Barron Kidd, Union District, Ritchie County, W. Va.	Uneconomical	-----
C168-1244 B 4-24-68	Sinclair Oil & Gas Co.	Transcontinental Gas Pipe Line Corp., St. Charles Ranch Field, Arkansas County, Tex.	Depleted	-----
C168-1245 A 4-25-68	Texaco, Inc., Post Office Box 5232, Houston, Tex. 77052.	Panhandle Eastern Pipe Line Co., Putnam Field, Dewey County, Okla.	15.4	14.65
C168-1246 A 4-25-68	C. J. Plimmer (Operator) et al., 1517 Bank of the Southwest Bldg., Houston, Tex. 77002.	Arkansas Louisiana Gas Co., Suffolk Area, Upshur County, Tex.	12.1232	14.65

Filing code: A—Initial service.

B—Abandonment.

C—Amendment to add acreage.

D—Amendment to delete acreage.

E—Succession.

F—Partial succession.

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Pres-sure base
C168-1247 A 4-25-68	Sun Oil Co. (Southwest Division) 1608 Walnut St., Philadelphia, Pa. 19103.	Diamond Shamrock Corp., Crest Field, Ochiltree County, Tex.	13.0	14.65
C168-1248 A 4-25-68	do	do	-----	-----
C168-1249 A 4-26-68	G. E. Kadane & Sons, Operator, Post Office Drawer 1740, Wichita Falls, Tex. 76807.	Diamond Shamrock Corp., Ferry-ton Field, Ochiltree County, Tex.	13.0	14.65
C168-1250 F 4-22-68	Sabine Oil Industries, Inc. (successor to Harper Oil Co.), c/o Harry C. Marberry, attorney, 2207 First National Bldg., Oklahoma City, Okla.	United Gas Pipe Line Co., acreage in Trinity County, Tex.	15.0	14.65
C168-1251 (G-11744) F 4-22-68	Sabine Oil Industries, Inc. (successor to Sinclair Oil & Gas Co.)	Northern Natural Gas Co., Mocane Laverne Field, Beaver County, Okla.	17.0	14.65
C168-1252 F 4-22-68	Sabine Oil Industries, Inc. (successor to Harper Oil Co.)	do	-----	-----
C168-1253 B 4-26-68	Drake and Purley, c/o Claude D. Drake, Jr., partner, Glenview, W. Va.	Colorado Interstate Gas Co., Mocane Laverne Field, Beaver County, Okla.	17.3333	14.65
C168-1254 B 4-29-68	Blahe Oil & Gas Co.	Consolidated Gas Supply Corp., Court House District, Lewis County, W. Va.	Uneconomical	-----
C168-1255 A 4-29-68	Continental Oil Co., Post Office Box 2197, Houston, Tex. 77001.	Equitable Gas Co., acreage in Gilmer County, W. Va.	Depleted	-----
C168-1256 Humble Oil & Refining Co., Post Office Box 2189, Houston, Tex. 77001.	do	El Paso Natural Gas Co., Angels Peak, Aztec, Blanco Fields, San Juan County, N. Mex.	13.0	15.025
C168-1257 B 4-29-68	Getty Oil Co., Post Office Box 1494, Houston, Tex. 77001.	A Kansas Oklahoma Gas Co., Gilmer County, Tex.	12.1232	14.65
C168-1258 A 4-29-68	Texas City Refining, Inc., Post Office Box 1271, Texas City, Tex. 77590.	Mercedes Field, Hidalgo County, Tex.	Depleted	-----
C168-1259 A 4-29-68	Flag Oil Corp. of Delaware (Operator) et al., Post Office Box 23, Midland, Tex. 79701.	United Gas Pipe Line Co., Bayou Ican La Croix Field, Terrebonne Parish, La.	20.625	15.025
C168-1260 (G-14403) F 4-22-68	Southwest Oil Industries, Inc. (successor to Sinclair Oil & Gas Co.) c/o Harry C. Marberry, attorney, 2207 First National Bldg., Oklahoma City, Okla.	Panhandle Eastern Pipe Line Co., West Tegenard Field, Woods County, Okla.	18.77	14.65
C168-1262 (G-1367-99) F 4-24-68	Imperial-American Management Co. (successor to Bronco Oil Corp.), 900 Security Life Bldg., Denver, Colo. 80202.	Northern Natural Gas Co., West Clear Lake Field, Beaver County, Okla.	17.0	14.65
C168-1263 A 4-24-68	Pioneer Production Corp., Post Office Box 2542, Amarillo, Tex. 79105.	Michigan Wisconsin Pipe Line Co., acreage in Wheeler County, Tex.	17.0	14.65
C168-1264 B 4-30-68	Helen F. Young, et al.	Consolidated Gas Supply Corp., McKim District, Pleasant County, W. Va.	Uneconomical	-----
C168-1266 (G-14403) F 4-29-68	Franklin Supply Co. (successor to Sun Oil Co.), 2900 Security Life Bldg., Denver, Colo. 80202.	El Paso Natural Gas Co., Aneth Area, White Mesa Unit, San Juan County, Utah.	17.7	15.025

1 Deletes acreage assigned to Edwin L. Cox.

2 Deletes acreage assigned to Fair-Porter Drilling Corp.

3 Deletes acreage assigned to James A. Wood, trustee.

4 Includes 1.4 cents upward B.t.u. adjustment. Subject to upward and downward B.t.u. adjustment.

5 Includes 0.1532-cent tax reimbursement.

6 Rate for sour gas. Includes 0.1532-cent tax reimbursement.

7 Rate for sweet gas. Includes 0.1596-cent tax reimbursement.

8 Includes 1.77 cents upward B.t.u. adjustment.

9 Subject to upward and downward B.t.u. adjustment.

[F.R. Doc. 68-5805; Filed, May 17, 1968; 8:45 a.m.]

[Docket No. RI68-612]

McGRATH & SMITH, INC., ET AL.

Order Accepting Rate Schedule and Supplement, Providing for Hearing on and Suspension of Proposed Change in Rate

MAY 9, 1968.

On April 12, 1968, McGrath & Smith, Inc. (Operator), et al.,¹ (McGrath) tendered for filing a proposed change in their presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is designated as follows:

¹ Address is: 710 Vaughn Building, Midland, Tex. 79701. Attention: Hamilton E. McRae, Esquire.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI68-612	McGrath & Smith, Inc. (Operator) et al., 710 Vaughn Bldg., Midland, Tex. 79701, Attn: Hamilton E. McRae, Esq.	23	3	El Paso Natural Gas Co. (Howard Draw, Northeast (San Andres 1165) Field, Crockett County, Tex.) (R.R. District No. 7-C) (Permian Basin Area).	\$5,400	4-12-68	5-13-68	(Accepted)	16.5	17.5	

² Contract ratification dated Oct. 11, 1967, adopts terms of contract dated Nov. 9, 1966, between C. Gary Garlitz and buyer. Covers a sale of new gas-well gas.

³ The stated effective date is the first day after expiration of the statutory notice.

⁴ Contract dated Nov. 9, 1966, which provides the basis for the proposed rate increase.

⁵ Periodic rate increase.

⁶ Pressure base is 14.65 p.s.i.a.

⁷ Not previously reported. Sale being made under Respondent's small producer certificate issued July 20, 1966, in Docket No. CS66-101.

McGrath request a retroactive effective date of January 1, 1968, for their proposed rate schedule, supplement, and rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for McGrath's rate filings and such request is denied.

McGrath, holder of a small producer certificate, proposes a periodic rate increase from 16.5² cents to 17.5 cents per Mcf, amounting to \$5,400 annually, for a sale of new gas-well gas to El Paso Natural Gas Co. in the Permian Basin Area of Texas. McGrath's proposed rate exceeds the applicable area ceiling rate of 16.5 cents per Mcf prescribed by Opinion No. 468 for sales of new gas-well gas under small producer certificates and should be suspended for 5 months from May 13, 1968, the date of expiration of the statutory notice. McGrath's rate increase filing is subject to rejection as of the date of filing in the event the Permian court stay is dissolved because it exceeds the applicable area ceiling rate prescribed by Opinion No. 468.³

The sale in question was not being rendered by McGrath at the time McGrath was issued a small producer certificate; consequently, there is no rate schedule on file with the Commission covering the sale. McGrath, concurrently with their notice of change in rate, have submitted copies of the contract⁴ covering the sale, which supports their 17.5 cents per Mcf increased rate. We believe that it would

be in the public interest to accept for filing McGrath's proposed ratification and contract to become effective on May 13, 1968, the date of expiration of the statutory notice, but not the proposed rate contained therein which is suspended as hereinafter ordered.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause has been shown for accepting for filing McGrath's contract ratification dated October 11, 1967, designated as McGrath's FPC Gas Rate Schedule No. 3, and contract dated November 9, 1966, designated as Supplement No. 1 to McGrath's FPC Gas Rate Schedule No. 3, and for permitting such contract ratification and contract to become effective on May 13, 1968, the date of expiration of the statutory notice.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 2 to McGrath's FPC Gas Rate Schedule No. 3 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) McGrath's contract ratification dated October 11, 1967, designated as McGrath's FPC Gas Rate Schedule No. 3, and contract dated November 9, 1966, designated as Supplement No. 1 to McGrath's FPC Gas Rate Schedule No. 3, are accepted for filing and permitted to become effective on May 13, 1968, the date of expiration of the statutory notice.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the law-

fulness of the proposed change contained in Supplement No. 2 to McGrath's FPC Gas Rate Schedule No. 3.

(C) Pending such hearing and decision thereon, Supplement No. 2 to McGrath's FPC Gas Rate Schedule No. 3 is hereby suspended and the use thereof deferred until October 13, 1968, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before June 26, 1968.

By the Commission.

[SEAL]

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5806; Filed, May 17, 1968; 8:45 a.m.]

[Docket No. RI68-613 etc.]

READING & BATES OFFSHORE DRILLING CO. ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund¹

MAY 9, 1968.

The Respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under

¹ Does not consolidate for hearing or dispose of the several matters herein.

Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however*, That the supplements to the rate schedules filed by Respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule

involved. Unless Respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before June 26, 1968.

By the Commission.

[SEAL]

GORDON M. GRANT,
Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI68-613....	Reading & Bates Off-shore Drilling Company (Operator) et al., 11th Floor Philtower Bldg., Tulsa, Okla. 74103; Attn: L. J. Pierce, Vice President.	2	11	El Paso Natural Gas Co. (North Justis Blinberry and North Justis Tubb Drinkard Fields, Lea County, N. Mex.) (Permian-Basin Area).	\$74	4-12-68	5-13-68	5-14-68	9.0	10.0	
RI68-614....	Sohio Petroleum Co., 970 First National Annex, Oklahoma City, Okla. 73102.	110	9	Phillips Petroleum Co. (West Panhandle Pool, Hutchinson and Moore Counties, Tex.) (RR. District No. 10).	917	4-15-68	6-11-68	6-12-68	13.0832	14.0832	RI68-388.
RI68-615....	Calvert Exploration Co. (Operator) et al., 2300 Fourth National Bank Bldg., Tulsa, Okla. 74119.	6	6	Northern Natural Gas Co. (East Balko Field, Beaver County, Okla.) (Panhandle Area).	127	4-11-68	5-12-68	5-13-68	18.00	18.015	
.....do.....	do.....	8	4	Colorado Interstate Gas Co. (Mocene Field, Beaver County, Okla.) (Panhandle Area).	32	4-11-68	5-12-68	5-13-68	18.00	18.015	
.....do.....	do.....	10	4	Natural Gas Pipeline Co. of America (Camrick Southeast Pool, Beaver County, Okla.) (Panhandle Area).	24	4-11-68	5-12-68	5-13-68	17.80	17.815	
RI68-616....	Reading & Bates Production Co. et al. (Operator), 11th Floor, Philtower Bldg., Tulsa, Okla. 74103.	1	2	Natural Gas Pipeline Co. of America (Nobscot Field, Custer and Dewey Counties, Okla.) (Oklahoma "Other" Area).	67	4-12-68	5-13-68	5-14-68	15.0	15.015	
RI68-617....	Reading & Bates Production Co. (Operator) et al.	2	2	Panhandle Eastern Pipe Line Co. (South Teagarden Field, Woods County, Okla.) (Oklahoma "Other" Area).	16	4-12-68	5-13-68	5-14-68	15.06	15.075	

² The stated effective date is the effective date requested by Respondent.

³ The suspension period is limited to 1 day.

⁴ Periodic rate increase.

⁵ Pressure base is 14.65 p.s.i.a.

⁶ It cannot be determined under which of Phillips' plants the acreage is dedicated. Phillips resells the gas in the area from its Sherman Plant under Phillips' Rate Schedule No. 4 to Michigan Wisconsin Pipe Line Co. and from its Hansford and Sneed Plants under its Rate Schedule No. 5 to Panhandle Eastern Pipe Line Co. at various rates which are in effect subject to refund.

⁷ Subject to a deduction of 0.4466 cent for sour gas.

⁸ Correction letter dated Apr. 16, 1968, filed Apr. 17, 1968.

⁹ The stated effective date is the first day after expiration of the statutory notice.

¹⁰ Tax reimbursement increase.

¹¹ Rate suspended in Docket No. RI68-195 until Mar. 26, 1968, or, until made effective. On Mar. 7, 1968, Calvert filed motion to make rate effective.

¹² Subject to proportional upward and downward B.t.u. adjustment from 1,000 B.t.u.'s per cubic foot.

¹³ Subject to a downward B.t.u. adjustment.

¹⁴ Includes 0.06 cent upward B.t.u. adjustment. Base rate subject to upward B.t.u. adjustment of 1/100 cent for each B.t.u. in excess of 1,000 B.t.u.'s per cubic foot and proportionate downward B.t.u. adjustment from 1,000 B.t.u.'s per cubic foot.

Calvert Exploration Co. (Operator) et al. (Calvert), request a retroactive effective date of October 26, 1967, and waiver of any suspension period with respect to their tax reimbursement increases should they be suspended by the Commission. Good cause has not been shown for granting Calvert's request for an earlier effective date or for waiving the suspension periods with respect to their rate filings and such request is denied.

Reading & Bates Offshore Drilling Co. (Operator) et al. (Reading), who is a respondent in the Permian "Show Cause" order, proposes a periodic rate increase from

9 cents to 10 cents per Mcf for a sale of gas to El Paso Natural Gas Co. in the Permian Basin Area of New Mexico. Although the proposed rate does not exceed the area base rate of 13.5 cents per Mcf, plus applicable State and local production taxes in effect on September 1, 1965, Reading has not filed a quality statement establishing an applicable area ceiling rate after quality adjustments. We conclude, in this situation, that Reading's proposed rate increase should be suspended for 1 day from May 13, 1968, the proposed effective date, because Reading has not filed the required quality statement. At

such time as Reading files an acceptable quality statement, and it establishes an applicable area ceiling rate equal to or above the presently proposed rate herein, the suspension proceeding ordered herein may be terminated.

Sohio Petroleum Co. (Sohio) proposes a periodic rate increase from 13.0832 cents to 14.0832 cents, amounting to \$917 annually, for a wellhead sale of gas to Phillips Petroleum Co. (Phillips) from the West Panhandle Pool, Hutchinson and Moore Counties, Tex. (Railroad District No. 10). Phillips gathers and processes the gas and

resells it to an interstate pipeline company.¹⁵ Although the proposed increase is not dependent upon a corresponding increase in rate by Phillips, it does exceed the applicable area increased rate ceiling of 11 cents per Mcf for Texas Railroad District No. 10 as announced in the Commission's statement of general policy No. 61-1, as amended. Consistent with prior Commission action on similar sales to Phillips, Sohio's proposed rate increase should be suspended for 1 day from June 11, 1968, the proposed effective date.

The proposed rate increases filed by Reading & Bates Production Co., et al. (Operator); Reading & Bates Production Co. (Operator) et al. (both referred to herein as Reading & Bates), and Calvert reflect tax reimbursement for the recently enacted increase in the Oklahoma Excise Tax from 0.02 cent to 0.04 cent per Mcf which became effective on July 1, 1967. The proposed rates exceed the applicable 11 cents per Mcf area increased rate ceilings for Panhandle and Oklahoma "Other" Area as announced in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56). Since the

¹⁵ It cannot be determined to which of Phillips' plants the acreage is dedicated. Phillips resells the gas in the area from its Sherman Plant under its FPC Gas Rate Schedule No. 4 to Michigan Wisconsin Pipe Line Co. and from its Hansford and Sneed Plants under its FPC Gas Rate Schedule No. 5 to Panhandle Eastern Pipe Line Co., at rates which are in effect subject to refund.

proposed increases relate to tax reimbursement only, we conclude that they should be suspended for 1 day from May 12, 1968 (Calvert), the date of expiration of the statutory notice, and May 13, 1968 (Reading & Bates), the proposed effective date.

[F.R. Doc. 68-5807; Filed, May 17, 1968; 8:45 a.m.]

[Docket No. RI68-618 etc.]

U.S. NATURAL GAS CORP. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates¹

MAY 9, 1968.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the law-

¹ Does not consolidate for hearing or dispose of the several matters herein.

fulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before June 26, 1968.

By the Commission.

[SEAL]

GORDON M. GRANT,
Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI68-618....	U.S. Natural Gas Corp., 9601 Wilshire Blvd., Suite 620, Beverly Hills, Calif. 90211, Attn: Frank P. Saponaro, Jr., Esq.	4	4	Colorado Interstate Gas Co. (Desert Springs Area, Sweetwater County, Wyo.).	\$3,092	4-11-68	5-12-68	10-12-68	\$ 17.15	\$ 18.15	RI68-9.
RI68-619....	Mobil Oil Corp., Post Office Box 1774, Houston, Tex. 77001, Attn: R. D. Haworth, Esq.	402	9	El Paso Natural Gas Co. (Brown-Basset (Sweet) Field, Terrell County, Tex.) (RR. District No. 7-C) (Permian Basin Area).	10,019	4-12-68	5-13-68	10-13-68	\$ 14.5	\$ 16.0	
RI68-620....	George R. Brown, 1201 San Jacinto Bldg., Houston, Tex. 77002.	15	3	Arkansas Louisiana Gas Co. (Southwest Mayfield, Beckham County, Okla.) (Oklahoma "Other" Area).	976	4-15-68	5-16-68	10-16-68	11.0	\$ 12.0	

¹ The stated effective date is the first day after expiration of the statutory notice.

² Periodic rate increase.

³ Pressure base is 14.65 p.s.i.a.

⁴ Includes 2.15 cents per Mcf upward B.t.u. adjustment which is the maximum allowed under the terms of the contract.

⁵ Previously reported rate of 17.35 cents per Mcf included a 2.25 cents per Mcf upward B.t.u. adjustment computed on a dry gas basis rather than wet gas basis as used herein.

⁷ The stated effective date is the effective date requested by Respondent.

⁸ "Fractured" rate increase. Respondent contractually due 16.5 cents per Mcf as of Aug. 1, 1964.

⁹ Subject to adjustment for quality pursuant to Ordering Paragraph (I) of order conditionally approving Settlements in Docket Nos. CI65-974 et al., issued Apr. 2, 1968.

U.S. Natural Gas Corp. (U.S. Natural) requests that its proposed rate increase be permitted to become effective on May 1, 1968. George R. Brown (Brown) requests an effective date of April 1, 1968, for his proposed rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit earlier effective dates for U.S. Natural and Brown's rate filings and such requests are denied.

Mobil Oil Corp. (Mobil) proposes a fractured rate increase from 14.5 cents to 16 cents for a sale of gas to El Paso Natural Gas Co. in the Permian Basin Area of Texas. Mobil was contractually due a rate of 16.5 cents per Mcf effective as of August 1, 1964. A quality statement for the subject sale has been filed, establishing an applicable area

ceiling rate of 13.97 cents per Mcf. Mobil gives no reason for fracturing its contractually due rate. Since the proposed rate exceeds the Permian Basin Area base rate of 14.5 cents per Mcf and the applicable area ceiling rate of 13.97 cents per Mcf, we conclude that it should be suspended for 5 months from May 13, 1968, the proposed effective date.

U.S. Natural and Brown's proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56) and should be suspended for 5 months from the date of expiration of the statutory notice in each case.

[F.R. Doc. 68-5808; Filed, May 17, 1968; 8:45 a.m.]

[Docket Nos. E-7416, E-7393]

APPALACHIAN POWER CO. ET AL.

Order Denying Motions To Dismiss and To Strike, and Providing for Investigation, Hearing, and Submission of Special Report

MAY 10, 1968.

Appalachian Power Co., Docket No. E-7416; City of Danville, Va. v. Appalachian Power Co. and American Electric Power Co., Inc., Docket No. E-7393.

This order institutes an investigation and directs a hearing on the lawfulness of the rate schedules as supplemented,

of the Appalachian Power Co. (Appalachian), Roanoke, Va., for service to 19 wholesale customers, all as set forth in the attached appendix. One of those schedules, as supplemented, provides for service to the city of Danville, Va. Heretofore, that city filed a Formal Complaint against Appalachian and its parent company, American Electric Power Co., Inc. (AEP), New York, N.Y. The separate docketing of that complaint filed on January 11, 1968 (Docket No. E-7393), results in a dual designation of this matter as set forth above.

As a part of this investigation and hearing, Appalachian is being directed to submit cost of service and revenue data as a special report to this Commission within a period of 60 days from the date of issuance of this order; to serve copies of such report upon the State utility regulatory bodies of the States of Tennessee, Virginia, and West Virginia (in which Appalachian provides electric utility service or owns facilities); and to serve that report upon each of the various wholesale electric systems set forth in the attached appendix.

Examination and analysis of data currently available to the Commission indicate that Appalachian's wholesale rates, charges, rules, regulations, classifications, practices, and contracts relating to the customers listed in the appendix may result in excessive rates or charges, and may be unjust, unreasonable, unduly discriminatory, or preferential, or may be otherwise unlawful within the meaning of the Federal Power Act. We note that Danville's complaint challenges the lawfulness of Appalachian's rate schedule, as supplemented, as it relates to the specific service provided to that city.

In setting this matter for hearing we note that while we regard AEP as an appropriate party of interest in the investigation of Danville's complaint (see sections 301(c), 307, and 309 of the Federal Power Act) and therefore do not grant that company's motion to dismiss as to it in Docket No. E-7393, we do not consider that company to be properly classifiable as a public utility within the meaning of the Federal Power Act. See Vanceburg Electric Light, Heat and Power System v. Kentucky Power Company and American Electric Power Company, Inc., 33 FPC 406, 407.

Danville in addition to alleging "public utility" status of AEP, as indicated above, and challenging the lawfulness of Appalachian's Rate Schedule FPC No. 26, as supplemented, further suggests that it may subsequently move to consolidate the matters which it raises (Docket No. E-7393), with a separate complaint proceeding initiated by the town of Belhaven, N.C., et al., Docket No. E-7308, against Virginia Electric and Power Co., et al. That proceeding is presently in a hearing stage before a designated presiding examiner of this Commission. As we construe Danville's complaint and the issues raised therein, it does not, at this time, seek to relate to the issues currently being heard in town of Belhaven, North Carolina, et al. v. Virginia Electric and Power Company, et al., Docket No. E-7308. It would ap-

pear that any possible future connection between the issues in the two matters would require additional pleadings by Danville at a future time, responses thereto by affected interests and consideration thereof by the Commission. We mention this now solely to remove any possible basis for misunderstanding by those parties of interest in the town of Belhaven et al. proceeding.

Among the cited grounds for Danville's complaint are claims that Appalachian unjustly and unduly discriminates against Danville in power supply arrangements, rates, charges, terms, and conditions. Danville cites sections 10(h), 201, 202, 205, 206, and 207 of the Power Act, among others.

On March 15, 1968, Appalachian filed an answer, motion to strike, and motions to dismiss Danville's complaint. Appalachian denies the city's charges of discrimination and section 10(h) violations as set forth in the complaint, and moves to strike a portion of Danville's complaint dealing with alleged dissemination of misinformation by the Companies as defamatory and irrelevant. Alternatively, in the event of a denial of the motion to strike, Appalachian denies the allegation of Danville.

The motions to dismiss by Appalachian and AEP are predicated upon (1) a charge that the complaint is vague and indefinite and does not comply with § 1.6(b) (2) of the Commission's rules of practice and procedure; (2) the factual allegations in the complaint do not in themselves afford a proper basis for the exercise of Commission jurisdiction over the substantive matters raised; and (3) AEP is not a public utility within the meaning of section 201(e) of the Act, and hence not a proper party to this proceeding.

Subsequent to Appalachian's aforementioned answer to the complaint and motions, both parties filed a multiplicity of pleadings; namely, objections to motions to strike and to dismiss filed March 20, 1968, by Danville; reply to Danville's objections to motions to strike and to dismiss filed April 1, 1968, by AEP; objection to filing of reply and motion for early hearing filed April 4, 1968, by Danville; and a letter response dated April 8, 1968, by AEP to Danville's April 4, 1968, objection and motion.

Upon consideration of the allegations contained in the formal complaint of Danville and the answering pleadings by Appalachian and AEP, we conclude that they raise questions of law and fact which should be heard concurrently with the issues raised by our investigation of the lawfulness of Appalachian's rate schedules as set forth in the attached appendix. Accordingly, we shall deny the motions to dismiss and strike without prejudice to the right of respondents to renew them in whole or in part at the conclusion of the hearing. To do otherwise would require us to reach a resolution of certain of the substantive issues raised by our investigation and hearing and to take that action purely upon the basis of general allegations and arguments advanced in the pleadings now

before us as a result of Danville's complaint.

We believe this matter should be set for early hearing, commencing with a prehearing conference before a presiding examiner. We believe this will facilitate the earliest practical disposition of Danville's complaint upon the merits consistent with our investigation and hearing on the lawfulness of all rate schedules of the company as referred to in the attached appendix. We believe that the prehearing conference will be a useful technique for further clarifying the questions which Danville's complaint raises. Our examination of the complaint shows it to be general in nature as respects the utility operating arrangements that the city wishes to undertake with Appalachian. In light of a particularized statement of those arrangements we believe that the relevance of all points raised by the answer and the motions to dismiss and strike can be better judged.

The Commission further finds: It is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, sections 10, 201, 202, 205, 206, 208, 301, 304, 307, 308, and 309, that a public hearing be held concerning the lawfulness of Appalachian's rate schedules, as supplemented, for service to Danville and 18 other wholesale customers, all as set forth in the appendix hereto, and the issues raised by the pleadings referred to above in Docket No. E-7393; and that the motions to dismiss by Appalachian and AEP and the motion to strike by Appalachian be denied without prejudice to their renewal at the conclusion of the hearing.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of Appalachian's rate schedules referred to in the finding above and the issues raised by the above-mentioned pleadings in Docket No. E-7393 in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. at a time to be specified by the presiding examiner following the prehearing conference hereinafter directed.

(B) A prehearing conference shall be held before the presiding examiner commencing at 10 a.m., e.d.t., June 11, 1968, in a hearing room of the Federal Power Commission, Washington, D.C. for purposes as specified in the Commission's rules of practice and procedure.

(C) The motions to dismiss by Appalachian and AEP and the motion to strike by Appalachian hereby are denied without prejudice to their renewal at the conclusion of the hearing.

(D) Appalachian and, to the extent necessary for purposes of the investigation and hearing herein, AEP are hereby directed, pursuant to the provisions of the Federal Power Act, particularly sections 301, 306, 307, 308, and 309 thereof, to grant to the members of the staff of the Federal Power Commission during regular business hours free access to and opportunity to inspect and examine all facilities, properties, accounts, memoranda, and other pertinent records of

those companies when requested so to do by the staff for the purposes of the hearing in this proceeding, and to furnish cost, revenue, operating or other relevant data as may be requested by the staff.

(E) Within 60 days from the date of issuance of this order, Appalachian shall file a special report using 1967 as the test year, showing Appalachian's cost of rendering service under rate schedules, as supplemented, to Danville and to the other wholesale electric customers, as set forth in the appendix hereto, calculated in accordance with applicable Commission precedents and submitted in the form prescribed in Statements A through O, § 35.13(b)(4)(iv) (18 CFR § 35.13(b)(4)(iv)) of the Commission's regulations under the Federal Power Act. Cost allocations are to be shown separately for the customer group served under each of Appalachian's forms of rate.

(F) The foregoing showing shall not preclude or limit any additional showing by Appalachian or others and shall be without prejudice to future action taken by the Commission or its staff, or to any future position Appalachian or others may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(G) The foregoing showing shall be submitted in writing with sufficient copies to provide this Commission with an original and nine copies, to provide each State Commission affected with six copies and to provide two copies for each other party which has been or may hereafter be granted intervention in this proceeding. Appalachian shall complete the service of the copies on the State Commissions and other parties.

(H) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before June 6, 1968, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.37).

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

APPENDIX

APPALACHIAN POWER COMPANY

Filed Rate Schedules

Customer	Rate schedule number
Town of Bedford, Va.	FPC No. 25.
City of Danville, Va.	FPC No. 26.
City of Martinsville, Va.	FPC No. 27.
Town of Richlands, Va.	FPC No. 29.
Town of Salem, Va.	FPC No. 30.
Black Diamond Power Co. (Elkhurst)	FPC No. 31.
Black Diamond Power Co. (East Hartland)	FPC No. 32.
Black Diamond Power Co. (Goodman)	FPC No. 33.
Black Diamond Power Co. (Sophia)	FPC No. 34.
Chesapeake Light & Water Co.	FPC No. 35.
Elk Power Co.	FPC No. 36.
Elkhorn Public Service Co. (Elkhorn)	FPC No. 37.
Elkhorn Public Service Co. (McDowell)	FPC No. 38.
J. R. Gildersleeve	FPC No. 39.
Kimball Light & Water Co.	FPC No. 40.

Old Dominion Power Co.	FPC No. 41.
Pemberton Light & Water Co.	FPC No. 42.
Standard Utility Service Corp.	FPC No. 43.
United Light & Power Co.	FPC No. 44.
Union Power Co. (Mullens Athletic Field)	FPC No. 45.
Union Power Co. (Rhodell)	FPC No. 46.
Union Power Co. (Mullens)	FPC No. 47.
Virginia Polytechnic Institute	FPC No. 48.
War Light & Power Co.	FPC No. 49.
City of Radford, Va.	FPC No. 50.

[F.R. Doc. 68-5922; Filed, May 17, 1968; 8:45 a.m.]

[Docket No. CP66-317]

COLORADO INTERSTATE GAS CO.

Notice of Petition to Amend

MAY 10, 1968.

Take notice that on May 8, 1968, Colorado Interstate Gas Co. (Petitioner), Post Office Box 1087, Colorado Springs, Colo. 80901, filed in Docket No. CP66-317 a petition to amend the order issued in said docket on June 13, 1966, authorizing an extension to January 1, 1969, of the period of the authorization granted therein, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the order issued June 13, 1966, in the instant docket, Petitioner was authorized, inter alia, to exchange natural gas with Natural Gas Pipeline Company of America (Natural). Petitioner was to deliver to Natural up to 15,000 Mcf per day for the first year of the authorized exchange and up to 30,000 Mcf per day for the second year. Natural was authorized in Docket No. CP66-318 to deliver an equivalent volume of gas to Public Service Company of Oklahoma for the account of Petitioner. The exchange was authorized for a period of 2 years.

By the instant filing, Petitioner requests that the subject exchange be continued for an additional 6-month period to January 1, 1969, in accordance with the agreement between Petitioner and Natural.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before June 3, 1968.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5923; Filed, May 17, 1968; 8:45 a.m.]

[Docket No. CP68-62]

INTERNATIONAL PAPER CO.

Order Denying Motion for Summary Disclaimer of Jurisdiction and Fixing Date for Prehearing Conference

MAY 13, 1968.

On October 13, 1967, International Paper Co. (International) filed a response to our show cause order issued September 5, 1967, in the above-entitled proceeding. International argues that its

operations are patently nonjurisdictional and moves for a "summary disclaimer of jurisdiction" without further proceedings. In support of its motion for summary disclaimer of jurisdiction, International makes the arguments set forth below.

(1) Under section 1(b) of the Natural Gas Act (Act) the Commission has jurisdiction over "the transportation of natural gas in interstate commerce." International claims that all "commerce" associated with its transportation of gas ceases as soon as the seller delivers the gas into International's pipeline because International does not resell the gas but uses it instead in its own manufacturing plant. Consequently, International declares, it cannot be correctly said that its transportation of gas is "in commerce," although the gas does move across State lines.

To buttress its not-in-commerce argument, International cites Transcontinental Gas Pipe Line Corporation, 33 FPC 237. In that case the Commission determined that the transportation by Transco of Texaco Inc.'s gas from points of delivery in Texas and Louisiana to Texaco's Eagle Point Refinery in New Jersey was subject to its jurisdiction. However, the Commission refused to require Texaco to obtain a certificate authorizing the transportation, through a 4½-mile pipeline, of its own gas from Transco's redelivery point to its refinery (33 FPC at 241). The Third Circuit affirmed the Commission's opinion in Public Service Electric and Gas Co. v. F.P.C., 371 F. 2d 1, stating (at page 5):

The Commission, adopting the position taken by the Examiner on the issue, held that Texaco's pipeline was an integral part of its plant facility and that interstate commerce ceased when the transported gas was redelivered at the terminus. * * *

International points out that its activities are no different from Texaco's because all it is doing is transporting its own purchased gas to its own plant facilities. Therefore, International concludes, it would be inconsistent with the Transco case supra and other Commission decisions¹ for the Commission to assert jurisdiction over its transportation activities.

(2) International observes that the Supreme Court stated in F.P.C. v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1, that the Commission could take into account the effect the price paid by a direct consumer might have on field price regulation in granting certificates under section 7 of the Act, but International claims that the Commission cannot legally assert jurisdiction over a consumer's own transportation activities just to achieve, by indirect means, complete price control over independent producers.

(3) The Supreme Court has not applied the "Shreveport" doctrine² to the

¹ Anchor Hocking Glass Corp., 2 FPC 930; Jersey Central Power and Light Co., 9 FPC 717; Montana Power Co., 10 FPC 950.

² Houston, E. & W. Texas Ry. Co. v. United States, 234 U.S. 342.

[Docket No. CP68-102]

NORTHERN NATURAL GAS CO.**Order Permitting Interventions and Fixing Date of Hearing**

MAY 13, 1968.

Natural Gas Act so as to give the Commission power to assert jurisdiction because of the "effect on" interstate commerce that a given transportation activity might have. In the Public Utility Act of 1935 Congress specifically excepted " * * * transmission of natural gas solely for use of the transmitter." While conceding that the natural-gas portion of that bill was not enacted, International claims that the essence of that exemption was preserved in the Natural Gas Act by congressional use of the phrase " * * * for ultimate public consumption" which shows that Congress did not intend for the Commission to assert jurisdiction over the transportation of gas destined for use in the transporter's own plant.

We are not at this time passing upon the merits of International's legal arguments because we believe that this matter should be scheduled for a prehearing conference at which International and the staff will have an opportunity to ask that facts concerning International's operations be introduced in evidence. We also think that, prior to the issuance of our opinion in this proceeding, International should have the opportunity of exchanging briefs with the staff and of filing exceptions and/or an answer to exceptions to the examiner's decision which will ultimately be issued. Therefore, we are hereinafter denying International's motion for summary disclaimer of jurisdiction without prejudice to its renewal after completion of appropriate proceedings.

The Commission finds: International's motion for summary disclaimer of jurisdiction should be denied without prejudice and the question of the jurisdictional nature of its transportation operations should be determined after appropriate proceedings before a presiding examiner, as hereinafter ordered.

The Commission orders:

(A) The motion for summary disclaimer of jurisdiction, filed October 13, 1967, as a part of International Paper Co.'s response to the show cause order issued herein, is denied without prejudice.

(B) Pursuant to the provisions of section 1.18 of the Commission's rules of practice and procedure, a prehearing conference before a duly designated presiding examiner shall commence at 10 a.m., e.d.s.t., on May 21, 1968, in a hearing room of the Federal Power Commission, 441 G Street, NW., Washington, D.C. 20426, for the purpose of considering all matters at issue in the proceeding, determining the manner and time within which evidence shall be presented, fixing the date on which the hearing shall commence, and entertaining adoption of suggestions which may expedite the proceeding.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5924; Filed, May 17, 1968; 8:45 a.m.]

In its application filed September 26, 1967, in Docket No. CP68-102, Northern Natural Gas Co. (Northern) seeks a certificate of public convenience and necessity authorizing it to construct and operate 9.1 miles of 24-inch mainline loop, 111.6 miles of branchline extending from Aberdeen, S. Dak., to Kulm, N. Dak., and eight measuring stations for the purpose of serving seven communities located in North Dakota and South Dakota. One measuring station will be used in making deliveries at Aberdeen, S. Dak., to Midwest Natural Gas Co. (Midwest) which will construct and operate 193 miles of pipeline to serve nine communities along a branchline extending from Aberdeen to Pierre, S. Dak.

Midwest will distribute the gas in both the seven cities served by Northern's proposed Kulm branchline and the nine cities served by its proposed Pierre branchline.

Northern's application contains an agreement between Northern and Midwest giving Northern a 10-year option to purchase the Pierre branchline at the original cost depreciated at a rate of 3½ percent per annum.

The total cost of Northern's facilities is estimated at \$3,236,500. The total cost of Midwest's Pierre branchline and distribution systems is estimated at \$4,800,000.

Further details concerning Northern's application have previously been given in a separate notice issued October 4, 1967, and published on October 11, 1967, in the FEDERAL REGISTER, 32 F.R. 14131.

The States of North Dakota and South Dakota filed notices of intervention respectively on October 12, 1967, and October 30, 1967. The two notices will be treated as if they had been filed pursuant to § 1.8(a) (1), FPC rules of practice and procedure, by the respective states' regulatory commissions.

Petitions to intervene have been filed as indicated in the following tabulation:

Petitioner	Date of filing
Iowa Public Service Co.-----	Oct. 30, 1967
Metropolitan Utilities District of Omaha.	Oct. 31, 1967
Minneapolis Gas Co.-----	Nov. 1, 1967
Western Power & Gas Co., Inc. ¹	Nov. 2, 1967
Northern States Power Co. (Minnesota), ¹ and Northern States Power Co. (Wisconsin). ¹	Nov. 2, 1967
Iowa Power and Light Co. ¹ ---	Nov. 3, 1967
Northwestern Public Service Co. ¹	Jan. 2, 1968
Midwest Natural Gas Co. ² ---	Feb. 16, 1968
Iowa Electric Light & Power Co. ¹	Mar. 8, 1968

¹ Not filed within the time prescribed for filing. Petitioners obtain all of their gas supply from Northern or are major customers of Northern.

² Not filed within the time prescribed for filing. The application of Northern contains a plan of proposed construction by the petitioner indicated in paragraphs 2 and 3 of

No objection has been made to the intervention of the State of North Dakota, the State of South Dakota or any of the above listed petitioners. We are of the view that the petitioners have alleged sufficient interest in the application to warrant intervention.

The petitioners, Metropolitan Utilities District of Omaha, Minneapolis Gas Co., Western Power & Gas Co., Inc., and Iowa Power and Light Co., have specifically requested a formal hearing on Northern's application. The other petitioner's wish to participate in any hearing held on the application.

The Commission finds:

(1) Although Western Power & Gas Co., Inc., Northern States Power Co. (Minnesota), and Northern States Power Co. (Wisconsin), Iowa Power and Light Co., Northwestern Public Service Co., Iowa Electric Light and Power Co., and Midwest Natural Gas Co. failed to file their petitions for intervention within the time prescribed by § 1.8(d) of the Commission's rules of practice and procedure, good cause to permit the late filing has been shown.

(2) The expeditious disposition of these proceedings will be effectuated by providing for service of testimony by the applicant and intervenors in support of the application prior to the holding of a hearing.

The Commission orders:

(A) The above-named petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however*, That the participation of such intervenors shall be limited to matters effecting asserted rights and interests as specifically set forth in said petitions for leave to intervene: *And provided, further*, That the admission of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) Applicant and any intervenor in support of the applicants shall file with the Commission and serve on all parties and the Examiner on or before May 31, 1968, their direct presentations.

(C) Pursuant to the provisions of § 1.20 of the Commission's rules of practice and procedure, a hearing shall be held before a hearing examiner of the Commission to be designated by the Chief Examiner in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., commencing at 10 a.m. (e.d.s.t.), on June 17, 1968.

(D) In order to consider the means by which the conduct of the proceedings may be facilitated, a prehearing conference shall be held by the hearing examiner prior to the commencement of the hearing, pursuant to § 1.18 of the Commission's rules of practice and procedure.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-5925; Filed, May 17, 1968; 8:45 a.m.]

this order which are intimately related to Northern's proposed expansion.

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